TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 69

NATIONAL LABOR RELATIONS BOARD,
PETITIONER,

vs.

RADIO & TELEVISION BROADCAST ENGINEERS UNION, LOCAL 1212, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 15, 1960

CERTIORARI GRANTED MAY 31, 1960

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INDEX

[fol. 1] IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Appendix to Petitioner's Brief

BEFORE NATIONAL LABOR RELATIONS BOARD

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

RADIO & TELEVISION BROADCAST ENGINEERS UNION, LOCAL 1212, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO.

Case No. 2-CD-146

4.26.57	Charge filed.
5.16.57	Notice of charge filed & notice of hearing issued.
6. 5.57	Regional Director's order rescheduling hearing dated.
6.12.57	Regional Director's order rescheduling hearing dated.
6.19.57	Hearing opened.
6.26.57	Hearing closed.
11.25.57	Decision and determination of dispute issued.
12.27.57	Complaint and Notice of hearing issued.
1. 6.58	Respondent's answer to the complaint sworn to.
2.10.58	Hearing reopened.
2.10.58	Hearing closed.
4.29.58	Trial Examiner's Intermediate Report issued.
6.10.58	Respondent's exceptions to the Intermediate Report received together with request for oral argument, (oral argument denied see page 15, footnote 1 of Decision and Order).
10. 9.58	Decision and Order issued.

BEFORE NATIONAL LABOR RELATIONS BOARD

Intermediate Report—April 29, 1958

STATEMENT OF THE CASE

Pursuant to a hearing under Section 10 (k) of the Act and Sections 102.71 and 102.72 of the Board's Rules and Regulations, on November 25, 1957, the Board issued its [fol. 2] Decision and Determination of Dispute [1] in this proceeding, finding that Respondent herein, Local 1212 International Brotherhood of Electrical Workers, AFL-CIO, was not entitled, either by certification of the Board or a contract with Columbia Broadcasting System, Inc., covering certain disputed work, to perform that work. Based upon the evidence before it consisting of 338 pages of transcript and a number of written pieces of evidence, the Board found reasonable cause to believe (1) that Local 1212 had engaged in, and had induced and encouraged CBS employees to engage in, a strike or a concerted refusal in the course of their employment to perform services for CBS, with an object of forcing or requiring CBS to assign the disputed work to technicians who were members of Local 1212 rather than to stage hands and other CBS employees who were members of Local 1 of International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, herein called Local 1; and (2) that Local 1212 thereby violated Section 8 (b) (4) (D) of the Act. The work in dispute is the operation of lights on remote television pickups. The Board, which had the contracts before it, found that this work was not covered by either CBS' contract with Local 1212 or its contract with Local 1. In the Decision and Determination of Dispute the Board directed that within 10 days from its issuance, Local 1212 "shall notify the Regional Director for the Second Region in writing whether or not it will refrain from forcing or requiring CBS, by means proscribed by Section 8 (b) (4) (D) of the [fol. 3] Act, to assign the disputed work to its members rather than to other employees of CBS," who are members of Local 1.

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[1] 119 NLRB No. 71.

The hearing before me, brought under Section 10 (b) of the National Labor Relations Act as amended, 61 Stat. 136 (herein called the Act), and testing whether in fact Respondent Local 1212 has violated and is violating Section 8 (b) (4) (D) of the Act, took place in New York, New York, on February 10, 1958. The complaint, issued on December 27, 1957, by the General Counsel of the National Labor Relations Board, herein called the General Counsel and the Board, and based on charges duly filed and served, set forth the Board's findings and order in its Decision and Determination of Dispute, and alleged that at all times since November 25, 1957, Local 1212 has failed and refused to comply with the Decision and Determination of Dispute. In its answer Respondent Local 1212 denied the commission of any unfair labor practices, and as and for a separate defense alleged that the proceedings herein under Section 10 (k) of the Act were unlawful and of no force and effect because Local 1212 was denied full opportunity to develop its case and present its evidence, and further, that the Board's Decision and Determination of Dispute, reported at 119 NLRB No. 71, was erroneous both as to law and fact.

All parties were represented at the hearing and were afforded opportunity to be heard, to examine and cross-examine witnesses, to introduce relevant evidence, to argue orally and to file briefs. Local 1212 and CBS filed briefs which have been carefully considered.

Upon the entire record in the case, including the proceedings under Section 10 (k) of the Act, I make the following:

[fol. 4]

Findings of Fact

I. The Labor Organization Involved

Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO, and Theatrical Protective Union No. 1, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, are labor organizations within the meaning of Section 2 (5) of the Act.

II. The Business of the Company

Columbia Broadcasting System, Inc., a New York corporation, is, and has been at all times material herein, en-

gaged in radio and television network transmission in various States of the United States, and, at all times material herein, it owned and operated radio and television stations, under license issued by the Federal Communications Commission, in various States of the United States, including television station CBS-TV located in the City and State of New York. During the year prior to the issuance of the complaint CBS, in the course and conduct of operating the radio and television stations which it owned, had a gross income from said operations in excess of $1,000,000. CBS is, and at all times material herein has been, engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

[fol. 5] III. The Unfair Labor Practices

A. *The violation of Section 8 (b) (4) (D)*

In its Decision and Determination of Dispute herein the Board has already found the following facts, which were based upon the overwhelming preponderance of the evidence taken, and which were not disputed in the hearing before me:

On or about April 9, 1957, CBS first advised Local 1212 that it intended to assign to its Stage Hands, in Local 1's unit, the work of setting up and operating the lights for the Antoinette Perry Awards scheduled for telecast on April 21. This telecast was to originate on the stage of the Grand Ballroom of the Waldorf Astoria Hotel, in connection with other acts to be staged by the American Theater Wing. The work assignment was pursuant to the belief of CBS that it was not contractually bound to assign this remote lighting work to either labor organization.

On April 18, Local 1212 Business Manager Calame protested to CBS Vice President Fitts, who was in charge of labor relations, and threatened "trouble" if CBS insisted on assigning the work to Local 1. At about the same time, IBEW International Representative Lighty and Local 1212 Business Representative Pantell, who was Calame's assistant called on Fitts, insisted that Local 1212 was entitled to the work, and again threatened there would be trouble if the work was not done by Local 1212.

In the afternoon of April 21, after the stage hands had carried out CBS' instructions to install the necessary [fol. 6] lights for the stage show in the Grand Ballroom, the technicians proceeded to install duplicate lights, without any instructions from CBS. When Local 1212 Representative Pantell was asked why, he replied in the presence of the technicians, "this is an IBEW job. If we don't use our lights we are not doing the show." Later that afternoon, CBS representative Levin definitely advised Pantell that Local 1 would operate the necessary lights, and ordered the technicians to remove the duplicate lights. Bell, as spokesman for the technicians, refused. Pantell, who was present at the time, then called a meeting of the technicians to discuss the jurisdictional dispute, and as a result advised the CBS representatives again that if Local 1's lights were used, Local 1212 would not operate the cameras and the necessary incidental equipment even if its duplicate lights were also used. The technicians accordingly refused to complete the installation of the necessary microphones, refused to make pictures, and refused to report for the scheduled rehearsal between 6 and 7 p. m. Unwilling to accede to Local 1212's ultimatum to reassign the work to it, CBS at first ordered its technicians to remove the telecasting equipment, and some of it in fact was removed. Later, CBS countermanded its order, and instructed the technicians to reset the equipment. However the technicians refused to do so. Once again at about 10:30 or 11 p. m., CBS Representative Levin asked the technicians to make pictures, and was again refused.

As a result of the foregoing activity by Local 1212, the scheduled program was not telecast.

[fol. 7] Thus all the factors essential for a finding of a violation of Section 8 (b) (4) (D) are here present: It is clear from the record that Local 1212 was responsible for the refusal to do the work; by its conduct Local 1212 induced and encouraged the employees of CBS to engage in a concerted refusal to perform services for CBS; its object was to force CBS to assign this remote lighting work to members of Local 1212 rather than to members of Local 1; and, CBS was not failing to conform to any order or certification of the Board determining the bargaining representative for the employees performing the work in dispute.

Shortly after the issuance of the Board's Decision and Determination of Dispute an officer in the Board's Regional Office wrote Local 1212, directing it to notify the Regional Director in writing the steps it had taken to comply with the terms of the Board's Decision and Determination. On December 11, 1957, counsel for Local 1212 replied in writing that:

My client, Radio and Television Broadcast Engineers Union, Local 1212, IBEW, AFL-CIO, will not comply with the decision and determination of the National Labor Relations Board in this case, dated November 25, 1957. The Board's decision is erroneous, both as to law and fact. It is my client's intention to press this matter to an ultimate review by an appropriate court of law.

B. *Contentions of Local 1212; and conclusions*

At the hearing before me, and in its brief, Local 1212 made two basic contentions which it contends dispose of the case. It contended that at both hearings herein—the [fol. 8] 10 (k) hearing and the 8 (b) (4) (D) hearing—it was deprived of a full and complete hearing because it was not permitted to introduce evidence concerning CBS' custom and practice in assigning the disputed work; and it contended that the Board failed in its duty to make an affirmative award of jurisdiction as between Local 1212 or Local 1. Respondent contends that in view of these errors by the Board and its agents, the Board's Decision and Determination of Dispute is unlawful and Respondent has no duty to comply with it—so that its failure to comply can be no basis for a finding of an 8 (b) (4) (D) violation. These contentions are without merit.

1. In its Decision and Determination of Dispute herein the Board found that in CBS' separate negotiations with Local 1212 and Local 1, each union sought to include remote lighting in the coverage of its agreement and CBS refused; and that in fact remote lighting was not covered by either contract. The Board found further that in the negotiations between CBS and Local 1212, "the parties in fact agreed that the issue of remote lighting assignments remained unresolved."

In footnote 2 of its Decision and Determination of Dispute herein the Board stated,

The hearing officer rejected, as irrelevant and not bearing on the issues, Local 1212's offer of evidence that CBS' custom or practice was to assign to it the disputed work, more particularly described below. The ruling was proper. *I. L. A.* (*Kaplan*), 116 NLRB 1933, 1536; *Local 675, etc.* (*Port Everglades Terminal Company*), 116 NLRB 27, 37-38. See also *Local 16, etc.* (*Denali-McCray Construction Company*), 118 NLRB No. 12; *Radio & Television* [fol. 9] *Broadcast Engineers Union, Local 1212, etc.* (*CBS*), 114 NLRB 1354, 1358.

Cf. *I. L. A., etc.* (*Bellco Industrial Engineering Co., et al.*), 119 NLRB No. 16. In the *Port Everglades* case, *supra*, the Board said,

Finally, as neither enjoys clear contractual privileges over the work, Board precedent precludes definitive consideration of the further contention advanced by the ILA or the Operating Engineers that "custom and practice" supports their respective demands for the disputed oiler work.

At this point the Board said in a footnote,

The Board has consistently held that evidence tending to establish that, by tradition and custom, a particular union's members have performed work in dispute, are (sic) not material where, as here, the union relying on such facts has no immediate, enforceable, *contractual* claim to the disputed work. See, *e.g.*, *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry*, 108 NLRB 186, 200; *Los Angeles Building and Construction Trades Council*, 83 NLRB 477.

In the *Kaplan* case, *supra*, the Board stated,

We hold, moreover, as we did in the *Port Everglades* case, that a contract is no defense to a claim to disputed work where the contract fails to provide a basis for the claim in clear and unambiguous terms, regardless of past custom and practice.

In the 8 (b) (4) (D) hearing, Local 1212 sought to introduce the same evidence concerning custom and practice as to assignment of the disputed work which was rejected in the 10 (k) hearing, plus "additional evidence along the [fol 10] same line." The offer of proof was rejected on

the ground that that issue had already been passed upon by the Board in footnote 2 above. The offer went to the issue of entitlement to the disputed work, which was passed upon by the Board following the 10 (k) hearing in its Decision and Determination of Dispute.

2. Concerning the Board's alleged duty to make an affirmative award of jurisdiction, Respondent relied upon the recent decision of the Court of Appeals for the Third Circuit, *N. L. R. B.* v. *Locals 420, 428, United Ass'n of Journeymen and Apprentices, AFL (Frank W. Hake)*, 242 F. 2d 722 (3rd Cir. 1957), 39 LRRM 2629. The Board respectfully disagrees with that decision and holds the view that it is not incumbent upon the Board to make such a determination. *Local 450, International Union of Operating Engineers, AFL-CIO (Turner Construction, Hinote)*, 119 NLRB No. 44, footnote 14. See also *International Union of Operating Engineers, Local Union No. 12, AFL-CIO (West Coast Masonry Contractors, Inc.)*, 120 NLRB No. 5, footnote 7; *Local 16, ILWU (Dendli-McCray Construction Co.)*, 118 NLRB No. 12, footnote 4. In *Insurance Agents' International Union, AFL-CIO (Prudential Insurance Company of America)*, 119 NLRB No. 103, the Board said,

It has been the Board's consistent policy for itself to determine whether to acquiesce in the contrary views of a circuit court of appeals or whether, with due deference to the court's opinion, to adhere to its previous holding until the Supreme Court of the United States has ruled otherwise. But it is not for a trial examiner to speculate as to what [fol. 11] course the Board should follow where a circuit court has expressed disagreement with its views. On the contrary, it remains the trial examiner's duty to apply established Board precedent which the Board or the Supreme Court has not reversed. Only by such recognition of the legal authority of Board precedent will a uniform and orderly administration of a national act, such as the National Labor Relations Act, be achieved.

All of the elements necessary for a finding of a violation of Section 8 (b) (4) (D) being here present, Respondent having refused to comply with the Board's Decision and Determination of Dispute, and Respondent having

come forward with no adequate defense, I conclude on the preponderance of the evidence that Respondent has violated and is violating Section 8 (b) (4) (D) of the Act.

The Remedy

Having found that Respondent has violated Section 8 (b) (4) (D) of the Act, I shall recommend that it cease and desist from such conduct, and that it take certain affirmative action designed to effectuate the policies of the Act.

Conclusions of Law

1. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By inducing or encouraging the employees of Columbia Broadcasting System, Inc., to engage in a strike or a concerted refusal in the course of their employment to per-
[fol. 12] form services with an object of forcing or requiring Columbia Broadcasting System, Inc., to assign the work of operating lights on remote television pickups to members of Local 1212 rather than to members of Protective Union No. 1, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, Respondent, Local 1212, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (4) (D) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO, its representatives, agents, successors and assigns, shall:

1. Cease and desist from engaging in, or inducing or encouraging the employees of Columbia Broadcasting

System, Inc., to engage in, a strike or a concerted refusal in the course of their employment to perform services, where an object thereof is to force or require Columbia Broadcasting System, Inc., to assign the work of operating lights on remote television pickups to members of Local 1212 rather than to members of Theatrical Protective Union No. 1, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the [fol. 13] United States and Canada, AFL-CIO, unless Columbia Broadcasting System, Inc., is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Post at its business office and meeting hall in New York and on any bulletin board at Columbia Broadcasting System, Inc., New York, New York, where Local 1212 customarily posts any notices to its members, copies of the notice attached hereto as Appendix A. Copies of said notice, to be furnished by the Regional Director for the Second Region, shall, after being duly signed by its official representative, be posted by Respondent immediately upon receipt thereof, and maintained for a period of sixty (60) consecutive days thereafter, in conspicuous places including all places where notices to members of Respondent are customarily posted. Reasonable steps shall be taken by said Respondent to insure that said notices are not altered, defaced or covered by any other material.

(b) Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Intermediate Report, what steps the Respondent has taken to comply herewith.

Dated at Washington, D. C., this 29th day of April, 1958.

Alba B. Martin, Trial Examiner.

[fol. 14] APPENDIX A TO INTERMEDIATE REPORT

Notice

To all members of Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO

Pursant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

We will not engage in, or induce or encourage the employees of Columbia Broadcasting System, Inc., to engage in, a strike or a concerted refusal in the course of their employment to perform any services, where an object thereof is to force or require Columbia Broadcasting System, Inc., to assign the work of operating lights on remote television pickups to members of Local 1212 rather than to members of Theatrical Protective Union No. 1, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, unless Columbia Broadcasting System, Inc., is failing to conform to an order or certification of the [fol. 15] Board determining the bargaining representative for employees performing such work.

Radio & Television Broadcast Engineers Union, Local 1212 International Brotherhood of Electrical Workers, AFL-CIO, (Labor Organization),
By —— (Agent) or (Representative) ——(Title).

Dated ——, —, ——.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

BEFORE NATIONAL LABOR RELATIONS BOARD

DECISION AND ORDER—October 9, 1958

On April 29, 1958, Trial Examiner Alba B. Martin issued his Intermediate Report in this case, finding that the Re-

spondent Union had engaged and was engaging in certain unfair labor practices within the meaning of Section 8 (b) (4) (D) of the Act, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Union filed exceptions to the Intermediate Report and a brief.[1]

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

[fol. 16] The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.[2]

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO, and its officers, representatives, agents, successors and assigns:

1. Cease and desist from engaging in, or inducing or encouraging the employees of Columbia Broadcasting System, Inc. to engage in, a strike or a concerted refusal in the

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[1] The Union also requested oral argument. In our opinion, the record, exceptions and brief fully present the issues and the positions of the parties. Accordingly, the request for oral argument is hereby denied.

[2] For the reasons set forth in *Local 173, Wood, Wire & Metal Lathers International Union, AFL-CIO (Newark & Essex Plastering Co.)*, 121 NLRB No. 137, we respectfully disagree with the decision of the Court of Appeals for the Third Circuit in *N. L. R. B. v. Pipefitters Locals (Frank W. Hake)*, 242 F. 2d 722, to the extent that our decision herein may conflict therewith.

course of their employment to perform any services, where an object thereof is to force or require Columbia Broadcasting System, Inc. to assign the work of operating lights on remote television pick-ups to members of the Respondent Union rather than to members of Theatrical Protective Union No. 1, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, except insofar as [fol. 17] such action is permitted under Section 8 (b) (4) (D) of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Post at its business office and union hall in New York, New York, and on any bulletin board at Columbia Broadcasting System, Inc. in New York, New York, where the Respondent Union customarily posts notices to its members, copies of the notice attached hereto marked "Appendix."[3] Copies of said notice, to be furnished by the Regional Director for the Second Region, shall be immediately signed, posted, and maintained for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(b) Notify the Regional Director for the Second Region in writing, within ten (10) days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D. C., Oct. 9, 1958.

Philip Ray Rodgers, Member, Stephen S. Bean, Member, John H. Fanning, Member, National Labor Relations Board. (Seal).

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[3] In the event that this Order is enforced by a decree of the United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of a United States Court of Appeals, enforcing an Order."

[fol. 18] APPENDIX TO DECISION AND ORDER

Notice

To All Members of Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO:

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We Will Not engage in, or induce or encourage the employees of Columbia Broadcasting System, Inc. to engage in, a strike or a concerted refusal in the course of their employment to perform any services, where an object thereof is to force or require Columbia Broadcasting System, Inc. to assign the work of operating lights or remote television pickups to members of our Union rather than to members of Theatrical Protective Union No. 1, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, except insofar as such action is permitted under Section 8 (b) (4) (D) of the Act.

Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO. (Labor Organization). By —— —— (Representative). (Title).

Dated ——, ——, ——.

[fol. 19] This notice must remain posted for sixty days from the date hereof, and must not be altered, defaced, or covered by any other material.

BEFORE NATIONAL LABOR RELATIONS BOARD

DECISION AND DETERMINATION OF DISPUTE—Nov. 25, 1957

On April 26, 1957, Columbia Broadcasting System, Inc., herein called CBS, filed a charge with the Regional Director for the Second Region, alleging that Radio & Television Broadcast Engineers Union, Local 1212, International

Brotherhood of Electrical Workers, AFL-CIO, herein called Local 1212, had engaged and was engaging in certain unfair labor practices within the meaning of Section 8 (b) (4) (D) of the Act.

Thereafter, pursuant to Section 10 (k) of the Act and Sections 102.71 and 102.72 of the Board's Rules and Regulations, the Regional Director investigated the charge and provided for an appropriate hearing upon due notice. The hearing was held at New York, New York, on various dates between June 29 and 25, 1957, before I. L. Broadwin, hearing officer. All parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross examine witnesses, and to adduce evidence bearing on the issues.[1] The rulings of the hearing officer made at the hearing are free from prejudicial error and are hereby [fol. 20] affirmed.[2] Briefs have been filed by CBS and Local 1; none was filed by Local 1212.

Upon the entire record in this case the Board[3] makes the following:

FINDINGS OF FACT

1. CBS is engaged in commerce within the meaning of the Act.

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[1] The hearing officer granted a motion to intervene, made by Theatrical Protective Union No. 1, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO herein called Local 1.

[2] The hearing officer rejected, as irrelevant and not bearing on the issues, Local 1212's offer of evidence that CBS's custom or practice was to assign to it the disputed work, more particularly described below. The ruling was proper. *I. L. A. (Kaplan)*, 116 NLRB 1533, 1536; *Local 675, etc. (Port Everglades Terminal Company)*, 116 NLRB 27, 37-38. See also *Local 16, etc. (Denali-McCray Construction Company)*, 118 NLRB No. 12; *Radio & Television Broadcast Engineers Union, Local 1212, etc. (CBS)*, 114 NLRB 1354, 1358.

[3] Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel.

2. Local 1212 and Local 1 are each labor organizations within the meaning of the Act.

3. On February 14, 1952, Local 1212 was certified as the statutory representative of all technicians in certain departments of CBS, excluding lighting directors and special visual effects employees in New York City, and also excluding stage hands. The certification does not expressly mention the work here in dispute, which is the operation of lights on remote television pick-ups.

On June 23, 1955, CBS entered into an agreement with Local 1, which represents the stage hands, to remain in effect up to and including December 31, 1957. The agreement includes in its coverage stage electricians and stage and front light men operating spotlights and other lighting [fol. 21] devices used in connection with television performances at New York City stages or shops and at other mutually agreed-on theaters and spot locations. In the negotiations CBS, unable to obtain agreement between Local 1 and its rival Local 1212 on the assignment of the work of remote lighting, had refused Local 1's demands to include remote lighting in the coverage of the agreement, and the parties in fact agreed that the issue of remote lighting assignments remain unresolved.

On May 1, 1956, CBS entered into a no-strike union-security agreement for an initial term to and including January 31, 1958, with International Brotherhood of Electrical Workers, AFL-CIO, herein called IBEW, for and in behalf of Local 1212 and other locals not here involved. The agreement, generally covering the technical employees, includes in its coverage the operation of television equipment and apparatus by means of which electricity is applied in the transmission, transference, production or reproduction of vision with and/or without ethereal aid. In the negotiations IBEW had demanded inclusion of the set-up and operation of lighting equipment used on field or remote pick-ups. As with Local 1, CBS had refused this demand, on the ground that the rival locals had failed to agree on the resolution of this jurisdictional dispute over remote lighting. The question of remote lighting assignments accordingly remained unresolved in this agreement as well.

On or about April 9, 1958, CBS first advised Local 1212

that it intended to assign to its stage hands, in Local 1's [fol. 22] unit, the work of setting up and operating the lights for the Antoinette Perry Awards scheduled for telecast on April 21. This telecast was to originate on the stage of the Grand Ballroom of the Waldorf Astoria Hotel, in connection with other acts to be staged by the American Theater Wing. The work assignment was pursuant to the belief of CBS that it was not contractually bound to assign this remote lighting work to either labor organization.

On April 18, Local 1212 Business Manager Calame protested to CBS Vice-President Fitts, who was in charge of labor relations, and threatened "trouble" if CBS insisted on assigning the work to Local 1. At about the same time, IBEW International Representative Lighty and Local 1212 Business Representative Pantell, who was Calame's assistant, called on Fitts, insisted that Local 1212 was entitled to the work, and again threatened that there would be trouble if the work was done by Local 1212.

In the afternoon of April 21, after the stage hands had carried out CBS's instructions to install the necessary lights for the stage show in the Grand Ballroom, the technicians proceeded to install duplicate lights, without any instructions from CBS. When Local 1212 Representative Pantell was asked why, he replied in the presence of the technicians, "This is an IBEW job. If we don't use our lights we are not doing the show." Later that afternoon, CBS Representative Levin definitely advised Pantell that Local 1 would operate the necessary lights, and ordered the technicians to remove the duplicate lights. Bell, as spokesman for the technicians, refused. Pantell, who was present at the time, then called a meeting of the [fol. 23] technicians to discuss the jurisdictional dispute, and as a result advised the CBS representatives again that if Local 1's lights were used, Local 1212 would not operate the cameras and the necessary incidental equipment even if its duplicate lights were also used. The technicians accordingly refused to complete the installation of the necessary microphones, refused to make pictures, and refused to report for the scheduled rehearsal between 6 and 7 p. m. Unwilling to accede to Local 1212's ultimatum to reassign the work to it, CBS at first ordered its technicians to remove the telecasting equipment, and some of it was in fact

removed. Later, CBS countermanded its order, and instructed the technicians to reset the equipment. However, the technicians refused to do so. Once again at about 10:30 or 11 p. m., CBS Representative Levin asked the technicians to make pictures, and was again refused.

As a result of the foregoing activity by Local 1212, the scheduled program was not telecast.

Contentions of the Parties

CBS contends that the disputed work was not covered either by Local 1212's certification or by its agreement, and that Local 1212 was therefore not entitled to strike for the disputed work.

Local 1212, although afforded ample opportunity to file a brief with the Board, did not do so. At the hearing, however, it contended that it had not engaged in a strike, and that in any event the work was covered by its certification or contract.

[fol. 24] Local 1 has not been charged with any violation of the Act, and makes no contention that it was entitled to the work except by virtue of CBS's assignment in this instance.

Applicability of the Statute

Based on the foregoing evidence, we find reasonable cause to believe (1) that Local 1212 engaged in, and induced and encouraged CBS employees to engage in, a strike or a concerted refusal in the course of their employment to perform services for CBS, with an object of forcing or requiring CBS to assign the disputed work to technicians who are its members rather than to stage hands and other CBS employees who are members of Local 1; and (2) that Local 1212 thereby violated Section 8 (b) (4) (D). We further find that the dispute out of which the charge arose is properly before us for determination under Section 10 (k) of the Act.

Merits of the Dispute

It is well established that an employer is free to make work assignments without being subject to strike pressure by a labor organization seeking the work for its members, unless the employer is thereby failing to conform to an

order or certification of the Board, or unless the employer is bound by an agreement to assign the disputed work to the claiming union.[4] Local 1212 has no such order, and its certification does not include the work of operating lights on remote telecasts.[5] There remains for consideration [fol. 25] Local 1212's contention that it had a right to the disputed work by virtue of its agreement with CBS. As noted above, however, Local 1212 had demanded that the agreement should assign the disputed work to it, but CBS did not yield to this demand, and the agreement was silent on the point as a consequence. Local 1212 has thus failed to establish any contractual right to the disputed work.

We therefore find that Local 1212 is not entitled, by means proscribed by Section 8 (b) (4) (D), to force or require CBS to assign the disputed work to its members. However, we are not by this action to be regarded as "assigning" the work in question to Local 1, as we are not called upon to pass on that question.

Determination of Dispute

On the basis of the foregoing findings of fact and the entire record in this case, the Board makes the following Determination of Dispute, pursuant to Section 10 (k) of the Act:

1. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO, and its agents are not and have not been entitled, by means proscribed by Section 8 (b) (4) (D) of the Act, to force or require Columbia Broadcasting System, Inc., to assign the work of setting up and operating lighting equipment on remote telecasts to its members rather than to other CBS employees, who are members of Theatrical Protective Union No. One, International Alliance of Theatrical Stage Employees & Moving Picture Machine Operators of the United States and Canada, AFL-CIO.

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[4] *Local 16, etc. (Denali-McCray Construction Company)*, 118 NLRB No. 12.

[5] The certification expressly excludes "lighting directors and special visual effects employees in New York City."

[fol. 26] 2. Within ten (10) days from the date of this Decision and Determination of Dispute, Local 1212 shall notify the Regional Director for the Second Region, in writing, whether or not it will refrain from forcing or requiring CBS, by means proscribed by Section 8 (b) (4) (D) of the Act, to assign the disputed work to its members rather than to other employees of CBS, who are members of Theatrical Protective Union No. One.

Dated, Washington, D. C. Nov. 25, 1957.

Boyd Leedom, Chairman; Stephen S. Bean, Member; Joseph Alton Jenkins, Member; National Labor Relations Board. (Seal.)

[fol. 27] BEFORE THE NATIONAL LABOR RELATIONS BOARD, SECOND REGION

Stenographic Transcript of Testimony at Hearing of June 24, 1957

485 Madison Avenue,
New York, N. Y.,
June 24, 1957.

Met, pursuant to adjournment, at 9:30 a. m.

Before I. L. Broadwin, Hearing Officer

APPEARANCES:

McGoldrick, Dannett, Horowitz & Golub, Esqs., By: Emanuel Dannett, Esq. and E. Thayer Drake, Esq., Of Counsel, 3 East 54th Street, New York, N. Y., appearing on behalf of Columbia Broadcasting System, Inc., 485 Madison Avenue, New York, N. Y.

Spivak & Kantor, Esqs., By: Harold P. Spivak, Esq., Of Counsel, 225 Broadway, New York, N. Y., appearing [fol. 28] on behalf of Theatrical Protective Union No. 1, IATFSE, Intervenor.

Schoenwald, Silagi & Seiser, By: Robert Silagi, Esq., Of Counsel, 745 Fifth Avenue, New York, N. Y., appearing

on behalf of Radio & Television Broadcast Engineers Union, Local 1212, IBEW, AFL-CIO.

PROCEEDINGS

* * * * * * *

WILLIAM C. FITTS, JR., called as a witness on behalf of the Columbia Broadcasting System, Inc., being first duly sworn, took the stand and testified as follows:

Hearing Officer: State your full name.
The Witness: William C. Fitts, Jr.
Hearing Officer: Please state your address.
The Witness: My business address is 485 Madison Avenue, New York.

Direct Examination

By Mr. Dannett:

Q. Mr. Fitts, are you employed by Columbia Broadcasting System, Inc.?
A. I am.
Q. How long have you been so employed?
A. I have been employed by CBS since 1950.
Q. In what capacity are you presently employed?
A. I am vice president in charge of labor relations.

* * * * * * *

Q. Can you define a remote program for us?
A. Well, the way we use it, a remote origination is any origination which originates outside of a regular television theatre or studio.

* * * * * * *

[fol. 29] By Mr. Dannett:

Q. Mr. Fitts, were you at some time during the month of April informed that a question had arisen with respect to the assignment of remote lighting work on the "Tony" Awards program?
A. Yes, I was.
Q. Who spoke to you in this connection?

A. The first word I had of this was on April 9th, with Mr. Bates, my assistant, who reported to me a telephone conversation he had had with Mr. Raymond, the head of the stage and studio operation, in which Mr. Raymond had gone over the facts of this proposed broadcast with him. When Mr. Bates reported it to me, it seemed to me that this was the type of case that usually constituted a problem based on past history.

I called Mr. Raymond immediately to get the information from him as to what was involved, the elements of the program. He gave me that information. I then called Mr. Charles Calame, Business Manager of Local 1212, IBEW.

Hearing Officer: What was the date?

The Witness: That is April 9th, the telephone call.

Hearing Officer: To Mr. Calame?

The Witness: Yes.

Q. Will you continue, please?

A. I told him the facts as I understood them. I told him that under those facts I felt that the assignment would have to be made to Local on the lighting. He asked me to put that in writing.

On April 10th, I wrote him a letter confirming the telephone conversation.

Hearing Officer: May we have the letter, please? Mark this letter for identification as Employers' Exhibit No. 3.

[fol. 30] (Thereupon, the document above referred to was marked Employer's Exhibit No. 3 for identification.)

Hearing Officer: This paper marked Employer's Exhibit No. 3, is that a true coupy of the letter which you wrote?

The Witness: It is.

Hearing Officer: On April 10th, to Mr. Calame?

The Witness: It is.

Hearing Officer: And what is Mr. Calame's title?

The Witness: Business Manager of Local 1212, IBEW.

Hearing Officer: Do you offer it in evidence?

Mr. Dannett: Yes, sir.

The Witness: I wanted to add that on April 9th, after my telephone conversation with Mr. Raymond and with Mr. Calame, I then told Mr. Raymond that the decision was to assign the work of lighting on this origination to Local

No. 1 and to go ahead and make his arrangements to that end.

I also, either on April 9th or 10th, called Mr. Orville Sather, manager of technical operations, and told him what the facts were and what the decision on assignment was, and asked him to make it clear throughout his organization that this assignment had been made to Local No. 1.

. . . . . .

By Mr. Dannett:

Q. Mr. Fitts, in your telephone conversation on April 9th with Mr. Calame, you stated that you described the program to him.

Would you please tell us what you did say in that connection?

A. I told him that it was my understanding that [fol. 31] this program was being put on by the American Theatre Wing in the Grand Ballroom of the Waldorf; that they were using the stage there; that on the stage they were going to have some singing acts interpersed in the award ceremonies as the ceremonies went on; that they were going to have a master of ceremonies on the stage conducting the entire proceedings; that they were calling up to the stage the recipients of the various awards; that it was going to be necessary to light the stage itself and, in addition, it would be necessary to have side lights. Also, there would have to be follow spots, both to follow the acts and to follow the recipients of the awards on my understanding of the facts.

I also told him that it was my understanding that the American Theatre Wing had some preliminary conversations with representatives of Local No. 1 about the work in and around the stage and had already made some commitments to the effect that they would have to have some stagehands there, in any event.

That was the substance. And I told him that on those facts, trying to follow the general criteria that we had used in the past, we felt this assignment should be made to Local No. 1.

. . . . . .

Q. Who is Mr. Calame?

A. I think I stated that he was Business Manager of Local 1212, IBEW.

Mr. Dannett: May we have a stipulation to that effect?

Mr. Silagi: Yes.

Mr. Dannett: And may we have a stipulation with respect to Mr. Robert Pantell at this time?

[fol. 32] Mr. Silagi: He is Business Representative of Local 1212.

Hearing Officer: Pantell is an assistant to Calame, is he not?

Mra. Silagi: Yes; in effect.

Hearing Officer: They operate together?

Mr. Silagi: Yes.

By Mr. Dannett:

Q. Did you inform Mr. Raymond of the decision that you had reached?

A. I stated that I did, Mr. Dannett. I stated that I informed Mr. Raymond and Mr. Sather.

Mr. Spivak: Does the record show the title of Mr. Sather?

The Witness: Yes; I stated that he is manager of technical operations.

Q. When did you next hear from Mr. Calame or from any other union representative regarding your conversation of April 9th or your letter of April 10th?

A. The next I heard about this situation was on the Thursday before Easter, which I believe was April 18th. On that day I had a telephone call from Mr. Calame. He stated to me that this matter of the lighting assignment had caused a great deal of difficulty among his own men; that they didn't agree with the conclusion we had reached; that if we insisted on this, there would be trouble; that I better reconsider.

Q. What did you state, Mr. Fitts?

A. I told him that I thought the assignment had been made correctly. In any event, it had been made; that it was too late to do anything about it at that time; that I was

always glad to discuss any question and would discuss it, and that was the end of the conversation.

[fol. 33] That afternoon, Orville Sather called me and told me that he was hearing rumors of trouble over this assignment.

Hearing Officer: Who is Orville Sather?

The Witness: He is manager of technical operations.

I told him that the assignment remained as I had made it to Local No. 1. There would be no change in it; that I anticipated that I would probably have further conversations on Friday and would call him on Friday.

Also, on April 18th, after my conversation with Mr. Calame, I called the International office.

Q. The International office of the IBEW?

A. Yes; and I spoke to Al Hardy, who is the International representative who is in charge of the broadcast locals of IBEW. He is in Washington. I called him and told him what the situation was. I told him I anticipated trouble.

Q. What did Mr. Hardy say?

A. Mr. Hardy called me back later in the afternoon, after my first conversation, and told me that he would ask Mr. Russ Lighty, who is a representative of the International office in this area. He would ask Mr. Russ Lighty to meet with Mr. Calame that afternoon or that night, and that I would be hearing from them the next day, which was Friday.

Mr. Dannett: May it be stipulated that Mr. Ross Lighty is the IBEW International representative in this area?

Mr. Silagi: Yes, he is one of them.

Q. Did Mr. Lighty come to your office the following day?

A. On Friday, the 19th, Mr. Lighty and Mr. Pantell came to my office, yes.

[fol. 34] Q. Who else was present at that time?

A. Mr. Raymond.

Q. Please tell us of the conversation which ensued at that time?

A. In substance, it was that I first tried to review the past history of assignments, the way we had tried to make them.

I tried to explain to them why I had thought this assignment had to be made the way it was made.

They disagreed throughout. They said they didn't believe this; they didn't agree with it. They thought it was their work and insisted it was their work. Toward the end of the discussion, Bob Pantell did say that whatever lighting was done in connection with the television broadcast would have to be done by Local 1212, or else there would be trouble.

The conclusion of it was that I said I disagreed with them. I couldn't agree with their position and they, went out.

Q. Did you thereupon send a telegram to Mr. Hardy?

A. I did.

Mr. Dannett: I would like to offer in evidence a telegram from Mr. William C. Fitts to Mr. Albert O. Hardy dated April 19, 1957.

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The Witness: At about the same time that I sent this telegram, I again talked to Orville Sather on the telephone and told him of this conference that morning. I told him that the assignment remained as it had been made to Local No. 1, told him that I anticipated there would be difficulty at the Waldorf, and asked him to be sure to assign an engineer in [fol. 35] charge who could be at the Waldorf and see that the proper orders were issued for the performance of the work by the technical crew.

Also, that afternoon I made several efforts to reach Mr. Calame and didn't succeed. I also tried to reach Al Hardy again on the telephone before I sent the wire.

• • • • • • •

Q. To the best of your knowledge, does Local 1212 still adhere to the position that with respect to programs similar to the Tony Award program, it has a right to do the lighting work?

A. They have so stated, that this is their position: With respect to programs of this nature, it is their jurisdiction.

Q. And that they would refuse to allow any engineers to perform any work on such programs unless the lighting work was given to them?

A. This is what I have understood them to say, yes.

* * * * * * *

Re-Direct Examination.

By Mr. Dannett:

Q. I think you testified that in the negotiations which led to the making of Board's Exhibit No. 2, IBEW made a demand for revision of the agreement with respect to remote lighting?

A. That's correct.

Q. I show you Company's Exhibit No. 1 for identification and ask you whether or not this is a copy of part of the demands made upon CBS in that negotiation?

A. Yes, it is.

Mr. Dannett: I offer this copy in evidence.

Hearing Officer: Have you a copy of it?

Mr. Dannett: They received it at the last hearing, Mr. Hearing Officer.

[fol. 36] Hearing Officer: Is there any objection?

Mr. Spivak: No objection. The interlineations are not part of the original?

Mr. Dannett: No, they are not part of the original, nor are the notations on the side.

Mr. Spivak: I meant the notations.

Mr. Dannett: That is correct.

Hearing Officer: These proposed amendments in 1955 were proposed by whom?

The Witness: They were proposed by the negotiating representatives of the IBEW in the national negotiation for the national agreement, which is the exhibit.

* * * * * * *

By Mr. Dannett:

Q. At the time these proposals were made to you by IBEW, there was in effect an agreement between the company and IBEW, is that correct?

A. That's correct.

* * * * * * *

By Mr. Dannett:

Q. According to Employer's Exhibit No. 1, the union was seeking an amendment of Section 1.04 by adding the following words: "Set up an operation of field lighting equipment use on field pick-ups and the operation of film projectors, wherever used, for rehearsal purposes."

Was there any discussion in the negotiations which lead to the making of Board's Exhibit No. 2—was there any discussion at that time with respect to the union's proposal?

A. Yes.

Q. Will you tell us about it?

A. These proposals were given to us as we were bargaining across the table and each one of the proposed [fol. 37] changes was discussed in some detail. This was discussed back and forth as one of the union proposals.

Q. To the best of your ability, please summarize the discussion with respect to that particular proposal?

A. Well, the discussion in general was that the union representatives felt they had to have this grant of jurisdiction in this language because of the conflicts that had developed over remote lighting assignments. They insisted they had to have it. My position was that I couldn't give it to them, that another union claimed it and that I was not free to make a commitment where there were conflicting claims. That was the up-shot of it.

Q. Was the proposal accepted?

A. It was not accepted. Section 1.04 as now written in the agreement which is currently in effect does not include this language.

. . . . . .

By Mr. Dannett:

Q. Mr. Fitts, were there negotiations with IATSE regarding the making of a new agreement which was to become operative upon the termination of Employer's Exhibit No. 6?

A. Yes, there were such negotiations.

Q. And in the course of those negotiations, were various proposals or demands served upon you by Local No. 1?

A. Yes, they were.

Q. I show you Employer's Exhibit No. 2 for identification and ask you whether this is a copy of the demands served upon you in those negotiations?

A. Yes, this is a correct copy.

Mr. Dannett: I offer in evidence as Employer's Exhibit No. 2 the demands previously marked for identification.

[fol. 38] Hearing Officer: Is there any objection?

Mr. Silagi: No objection.

Mr. Spivak: No objection.

Hearing Officer. They will be received in evidence as Employer's Exhibit No. 2.

(Thereupon, the document previously marked Employer's Exhibit No. 2 was received in evidence.)

By Mr. Dannett:

Q. Mr. Fitts, I observe that under paragraph 1 of these demands, Local No. 1 was asking that the agreement cover work—and I am now quoting—"at such other theaters or premises, including remote spots, locations, etc. in New York City." Was there any discussion in the negotiations with respect to that demand?

A. Yes, there was very lengthy discussion with respect to that.

Q. When did those negotiations take place?

A. These negotiations were interrupted. They started around Thanksgiving or some time in November 1954, before the expiration date of the prior agreement. They were then interrupted because two of the companies in this negotiation—this was an industry negotiation—and two of the companies in this negotiation, NBC and ABC, had a negotiation with NABET on the West Coast. They had a negotiation on the West Coast. They had to interrupt these negotiations for about two months while they took on that negotiation, so we never really finished this agreement until some time in 1955. I guess it was in May.

Q. Will you please tell us, as you best recall it now, what the sessions were with respect to this particular demand?

A. Well, Local No. 1 said this was their jurisdiction. Their contention was that they had the electricians in the

theaters and the television studios, that lighting was lighting, in their words; that this lighting a remote was no dif-
[fol. 39] ferent from any other kind of lighting, and that they had to have it written into the contract to give them this jurisdiction, again because of the disputes that had existed over the years on the assignment of this work.

Q. That is, they already had lighting in the studios and now wanted the lighting on remotes?

A. They wanted it specified that this was their jurisdiction, their exclusive jurisdiction on remotes.

Q. What was the company's position?

A. All three companies negotiating jointly here took the position that they could not do this. They could not give exclusive jurisdiction because each of them had a conflicting claim from another union.

Q. As a result of those discussions, was IATSE's proposal accepted or rejected?

A. It was not accepted. It was rejected. The final agreement was written with no change on this point, except you will see that the agreement itself has attached to it a letter under which——

Mr. Silagi: What agreement?

The Witness: The current Local No. 1 agreement.

Mr. Dannett: Intervenor's Exhibit No. 1.

By Mr. Dannett:

Q. Will you continue?

A. Under the letter, the three companies agreed in substance that this question could not be written into the contract; that we would meet in the office of the International President of IATSE and attempt to work out some kind of settlement. Such meetings were held. I think there were two of them subsequent to the discussion of the agreement. The meetings were held. They came to nothing. Again, no agreement could be reached because we could not get the third party to agree even if we could agree, so that was left as it had been before.

[fol. 40] Q. The third party being IBEW in the case of CBS and NABET in the case of NBC and ABC?

A. That right.

Q. What is NABET?

A. National Association of Broadcasting Engineers and Technicians. They represent the technical employees at NBC and ABC.

Q. Similar to the representation of the technical employees by IBEW at CBS?

A. That's correct.

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ALBERT J. RAYMOND, called as a witness on behalf of Columbia Broadcasting System, Inc., being first duly sworn, took the stand and testified as follows:

Hearing Officer: Will you please state your full name and address?

The Witness: Albert J. Raymond, No. 30 Chauncey Avenue, New Rochelle, New York.

Direct Examination.

By Mr. Dannett:

Q. Mr. Raymond, are you employed by the Columbia Broadcasting System, Inc.?

A. I am.

Q. How long have you been so employed?

A. February 7, 1944.

Q. In what capacity are you presently employed?

A. I am manager of staging operations, television.

Q. How long have you been acting in that capacity?

A. About five years.

Q. As manager of staging operations, what are your duties, in general?

A. Well, the overall management of theatres and studios as it affects the physical setting of shows; also, supervise [fol. 41] the scenic designers, scenic construction, wardrobe, makeup, trucking, special effects and lighting.

Q. How many persons are under your direct or indirect supervision?

A. Approximately 700.

Q. Were you informed in April that there was to be a telecast of the "Tony" Awards program?

A. Yes, I was.

Q. Was this to be a commercial program?

A. That's correct.

Q. Where was the telecast of this program to take place?

A. In the Grand Ballroom of the Waldorf-Astoria.

* * * * * * *

Q. When was this program scheduled to be telecast?

A. April 21st, from 11:15 p. m. to 12 midnight.

* * * * * * *

Q. Did you have a conversation with Mr. Fitts with respect to who was to do the lighting on that program?

A. Several conversations with him.

Q. When was the first of those conversations?

A. Approximately April 9th, when I was told by Mr. Gallagher we were going to do the show. I discussed it then.

Q. Will you briefly state what Mr. Fitts told you was to be done with respect to the assignment of employees to handle the lighting?

A. Briefly, I told Mr. Fitts what I have just said about the setup here. I explained what we were going to do over there. Mr. Fitts told me that this was a job—the lighting was to be done by IATSE.

Q. Having been so informed, what did you do?

A. I called John Goodson, one of the Business Agents from Local 1, IATSE, and told him that I would need the men on April 21st, at 9 a. m.

[fol. 42] Q. How many stagehands did you request?

A. I requested eight men.

Q. What was the next date on which you had any conversation with anyone with respect to the assignment of the lighting work on the "Tony" Awards program?

A. It was on a Thursday prior to the show. Mr. Fitts called me and asked me to attend a meeting on Friday in his office with the representatives of the IBEW.

Q. That would be April 19th? The meeting was to be held on April 19th?

A. Right.

Q. Did you attend such a meeting in Mr. Fitts' office?

A. I did.

Q. Will you briefly describe what happened then?

A. Mr. Lighty of the International and Mr. Pantell took exception to the assignment of the work to IATSE. Mr. Fitts went into considerable detail in explaining the reasons why he assigned it to IATSE. They, however, took exception to it all the way through, and the final part of the meeting they said they would not go along with IATSE lighting, or something to that effect.

Q. Coming down to April 21st, did you go to the Waldorf-Astoria on that day?

A. I did.

Q. About what time did you arrive?

A. About 1:30 p. m.

Q. With whom were you at the time?

A. I was with Mr. Emmons and Mr. Bates.

Q. And Mr. Emmons is your assistant, is he?

A. Well, he is manager of theatre and stage operations, reporting to me.

Q. And Mr. Bates has been testified to as being—

A. The assistant director of labor relations.

Q. At that time, did you observe anything with respect [fol. 43] to the installation of supplemental lights for the show?

A. Well, immediately upon arrival, the first thing I did was to check the work that we had assigned to the stagehands. I found that they had installed all the lights as per instructions of the lighting director. They had the lights in place and ready to go.

Q. How many stagehands were there, if you know?

A. There were eight stagehands.

Q. On that day?

A. That's right.

* * * * * * *

Q. Did you see any members of the IBEW technical crew arriving?

A. Yes, I did, about 2:30, in that neighborhood.

Q. Did you observe anything with respect to the installation of lights by the IBEW crew?

A. That's right. Some place about four o'clock, I was scanning around the room. I noticed that next to each

camera they had installed follow spots and they also installed one large one on the second tier, in the center of the auditorium.

Hearing Officer: Had there been lights installed there before they installed theirs?

The Witness: The lights by the IATSE people.

Hearing Officer: Had been there.

The Witness: Yes.

Hearing Officer: And they followed and installed additional lights?

The Witness: That's correct.

Q. How many cameras were there?

A. Three cameras, to my knowledge.

Q. And these lights were installed close by the cameras; is that right?

[fol. 44] A. Next to two of the cameras, and the third camera had a 5000-watt above it on the next tier, installed by IBEW.

Hearing Officer: But lights had already been installed. They simply duplicated the lights?

The Witness: They brought in additional supplemental lighting of their own over and above what was put in by IATSE.

Hearing Officer: Was it necessary to have these additional lights that they brought in?

The Witness: No, sir.

Q. Did you speak to anyone concerning the lights installed by Local 1212 members?

A. Yes; Mr. Levin was engineer in charge. He had not arrived at this point. I proceeded to the second balcony, where they were setting up the control room. I spoke to Mr. Pantell, who happened to be up there with the technical crew. I said, "What are you fellows installing lights for," or something like this.

He said, "This is an IBEW job. If we don't use our lights, we are not doing the show."

Q. Was anyone else present at the time you had that conversation with Mr. Pantell?

A. I believe Mr. Emmons was with me and other members of the technical crew. I know Sandy Bell was there. He was the technical crew chief.

Q. And he is a member of the IBEW, a member of Local 1212?

A. Right.

Hearing Officer: What was meant by their statement that if they don't handle the lights, they won't do the show? What was meant by "doing the show"?

The Witness: They wouldn't use the cameras.

Hearing Officer: They wouldn't operate the cameras; is that right?

[fol. 45] The Witness: That's the word, yes, sir.

Hearing Officer: Is there anything else there they were to do?

The Witness: Well, they have to operate all the attendant gear that goes with it, the switches and all that.

Hearing Officer. How many men did they have there?

The Witness: I am not sure, but at least ten men.

Q. Did you subsequently have a conversation with Mr. Sam Levin with respect to the installation of the lights?

A. Yes.

Q. Who is Mr. Levin?

A. He was engineer in charge for CBS.

Q. A management representative; is that correct?

A. Yes.

Q. And did he then give any orders to Mr. Bell in your presence?

A. Yes, he did.

Q. Please tell us about that.

Hearing Officer: Who is Mr. Bell?

Mr. Dannett: That is the Sandy Bell, a technical crew chief, who was a member of the IBEW, Local 1212.

Hearing Officer: Look at Board's Exhibit No. 4 for identification.

What does it represent?

The Witness: To my knowledge, this represents the IBEW technical crew that was there.

Hearing Officer: Those were employees of CBS?

The Witness: That's correct.

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[fol. 46] By Mr. Dannett:

Q. I believe you testified that you were present when Mr. Levin gave instructions with respect to the lights; is that correct?

A. That's right.

Q. About what time was it?

A. About 5:15.

Q. And I think you testified he gave orders to Sandy Bell?

A. He gave orders to Bell to remove the lights, the IBEW lights.

Q. What did Mr. Bell reply, or what did anyone else reply?

A. Mr. Bell refused to remove the lights.

Q. What did he say?

A. Well, he stated that he would not remove the lights.

Hearing Officer: And Bell was an IBEW member?

The Witness: Yes, sir.

Hearing Officer: A member of Local 1212?

The Witness: Yes, sir.

Hearing Officer: You may continue.

Q. Was Mr. Pantell present at that time?

A. Yes, Mr. Pantell was present.

Q. What did Mr. Pantell state, if anything?

A. Mr. Pantell called a meeting of the boys down at the other end of the room. The technical IBEW boys available. They were gone about five minutes and they returned and Mr. Pantell said, "Unless we use IBEW lights, we will not do the show."

Hearing Officer: That is, they will not operate the cameras and the incidental equipment that want with the cameras?

The Witness: That's right.

Hearing Officer: Unless they did the lighting?

The Witness: That's right.

Q. Was there any request at this time, or at any other time while you were present, to Mr. Bell that pictures be [fol. 47] made?

A. Yes, at one point they asked Mr. Bell to make pictures, and again Mr. Pantell injected himself into the picture and refused to allow Mr. Bell to do it.

Mr. Silagi: Will you identify the "they."

The Witness: It was Sam Levin.

Q. Sam Levin asked that pictures be made. Mr. Bell stated they would not do it?

A. That's right.

Q. Did you hear Mr. Bell make any request with regard to completing the setup of equipment?

A. Yes. Mr. Levin requested Mr. Bell to complete the setup. Again, Mr. Bell refused to do it.

Q. Do you know what equipment had not been set up at the time you speak of?

A. Being at the technical department, I was advised there were microphones missing from the orchestra area.

Q. About what time was this?

A. Around 5:30 now, 5:20.

Hearing Officer: As this conversation or exchange went on, were the men in this technical crew present and did they hear what was said between Mr. Pantell and Mr. Levin?

The Witness: Yes, sir.

Hearing Officer: And Mr. Bell?

The Witness: Yes, sir.

Hearing Officer: They stood right there?

The Witness: Yes.

Hearing Officer: All bunched together?

The Witness: The majority. It looked like about eight or ten men standing around. I would say the majority were there.

[fol. 48]. Q. What happened after this, Mr. Raymond?

A. After this refusal to take the pictures and continue with the setup?

Q. Yes.

A. At approximately 6 p. m. the crew went out for dinner.

Q. Prior to that time, had there been any suggestion that the show be lighted by both IATSE and BEW?

A. I believe there were several suggestions, one by my-

self, where I asked Mr. Pantell—I said, "This show has been sold and there is prestige. Why not do it together, using the IA lights and the IBEW lights?"

He said, "Positively no. Unless we light it, we are not going to operate the cameras."

Q. Do you know whether there was a rehearsal of this program scheduled for the 21st?

A. Yes; 6 to 7 p. m.

Q. Did such a rehearsal take place?

A. No. The refusal of the work had came up and the boys had broke for dinner at this point when the rehearsal should have been going on.

Q. The members of IBEW were required to man the cameras and to handle the technical equipment in order that the rehearsal take place; is that correct?

A. That's correct.

Q. The rehearsal didn't take place?

A. No.

Q. Where were the men between the hours of 6 and 7 o'clock, if you know?

A. At dinner.

Q. And who instructed them to go to dinner?

A. Well, I thought Mr. Pantell instructed them.

Mr. Silagi: I have to strike it.

Hearing Officer: Strike it out. Do you know or don't you know?

The Witness: I am not sure, sir.

[fol. 49] Q. Do you know at approximately what time the men returned from dinner?

A. At 7 *a.*m.

Q. At that time, were there any further conversations with respect to the lighting?

A. Yes.

Q. Will you tell us about that?

A. Down in Box No. 1 Mr. Pantell, Mr. Bates and Mr. Levin and myself had a discussion about making pictures and going on with the show. Again, Mr. Pantell refused to allow the boys to make pictures or continue with the setup while the IATSE lights were going to be used.

Hearing Officer: What do you mean by making pictures?

The Witness: Pan around the room and just pick it up as it exists so that you could see it on a monitor.

Hearing Officer: That was part of the rehearsal, part of the preparations for the real show?

The Witness: They call it warming up the gear.

Hearing Officer: So that they would be all ready?

The Witness: That's right. We just like to see the pictures as they exist.

Q. Following that conversation, was there any further instruction given to the IBEW crew with respect to the removal of all of their equipment from the premises?

A. That's correct. In the presence of Mr. Pantell and Mr. Bates, Mr. Levin and myself, Mr. Bates made another attempt to operate the show with the IATSE lights and again there was a refusal.

Hearing Officer: By whom?

The Witness: By the IBEW, Mr. Pantell, to allow the crew to continue with the setup or to operate the cameras. At this point, Mr. Bates decided, as long as we are not getting any place on the discussion and there was a definite [fol. 50] "No," that the technical crew should strike the gear and get ready to remove it from the auditorium.

Mr. Silagi: May we have a time on this, please?

The Witness: Some place after 7, probably 7:30.

Q. And instructions were then given by Mr. Levin to that effect?

A. That's right. He gave Mr. Bell, the crew chief, instructions to remove the gear.

Q. What then took place?

A. Mr. Sam Digges, general manager of WCBS television, came up to us. Mr. Digges was very upshot. He had his show sold to Pepsi-Cola Bottlers.

He said, "At least leave the gear stand until air time, that we are showing good faith that we are trying to get the show on to the client."

With that, Mr. Levin gave instructions to the crew not to break down any further.

Q. Were any instructions given at that time to reset the equipment and make pictures?

A. Mr. Levin gave them instructions to reset the equipment.

Q. And what happened with respect to that instruction? Was it carried out?

A. There was a limited amount of work done in breaking it down, but they refused to continue to reset it back to where it was.

Q. Was this program telecast on the night of April 21st?

A. No, it was not.

Mr. Dannett: That is all I have.

Cross examination.

By Mr. Spivak:

Q. • • •

Did Mr. Pantell ever say, in the presence of other members of the IBEW crew, that he would refuse to continue [fol. 51] to let them operate unless IBEW operated the lights?

A. Yes; but I have so testified to that.

Q. On how many occasions did he actually say that?

A. Well, it was going on all night, but I would say three or four good firm ones.

Q. Were there other members of the IBEW crew in his presence at the time he made those statements?

A. Yes, I so stated that.

Q. Did Mr. Levin ever say to the technicians who were present that if they didn't perform as they were instructed, disciplinary action would be taken against them?

A. He told that to Mr. Bell, yes.

Q. What did Mr. Bell answer?

A. He shrugged his shoulders.

Q. Did he actually carry out the instructions issued to him?

A. No, he did not.

Hearing Officer: By "he" you mean whom?

Mr. Spivak: Sandy Bell.

Hearing Officer: And those instructions were what?

The Witness: To make pictures of the setup.

Hearing Officer: And they didn't do it?

The Witness: No, sir.

Hearing Officer: They were all there and the equipment was there and they didn't do what they were told to do?

The Witness: That's correct.

* * * * * * *

[fol. 52] ROBERT PANTELL, called as a witness on behalf of Columbia Broadcasting System, Inc., being first duly sworn, took the stand and testified as follows:

Hearing Officer: Please state your full name and address.

The Witness: Robert Pantell, No. 4 Terrace Circle, Great Neck, New York.

Direct examination.

By Mr. Dannett:

Q. I believe the testimony is that you are the Business Manager of Local 1212.

A. No, sir, I am the Business Representative of Local 1212.

Q. And you are an assistant to Mr. Calame?

A. In effect; yes.

Q. And Mr. Calame's full title is what?

A. Business Manager.

Q. Were you at the Waldorf-Astoria on April 21st?

A. Yes, sir.

Q. And you were in the Grand Ballroom on that date?

A. Yes, sir.

Q. You testified in an action brought in the U. S. District Court for the Southern District of New York by Charles T. Douds, as Regional Director of the Second Region of the National Labor Relations Board, on behalf of the National Labor Relations Board as petitioner, against Radio & Television Broadcast Engineers Union, etc., as respondent; is that right?

A. Yes, sir.

Q. And you so testified on June 21, 1957; is that not correct?

A. Yes, sir.

Q. I would like to read to you questions and your answers which were given at that hearing:

[fol. 53] "Q. When for the first time did you speak to any representative of CBS?

A. The first conversation I had with a representative of CBS was when Mr. Levin arrived on the scene. At that time Mr. Raymond instructed Mr. Levin to instruct Mr. Bell to have the technicians remove the technicians' lighting equipment, that the IATSE was going to operate the lights for the television show."

Do you remember that question and answer?

A. Yes, I do.

Q. Is the answer correct?

A. Absolutely, I believe.

Q. I read the following questions and answers:

"Q. Were you present when this was said?

A. Yes, I was.

Q. Did you make any reply?

A. The first thing I did was to gather the crew of technicians in sort of an impromptu meeting at which we discussed the situation. We finished our meeting, at which we talked about the work jurisdiction, whether stagehands or technicians. We returned to where Mr. Levin and Mr. Raymond and several other CBS officials were standing, and I informed them that we were ready, willing and able and eager, I might add, to do our job, but to do the complete job, which encompassed also the lighting of the program. I also told him if we could not do the whole job, we couldn't see how we could do any of it."

Do you remember those questions and answers?

A. I do.

Q. And were those answers correct?

A. They are.

Q. I will continue reading:

[fol. 54] "Q. At what time did that happen?

A. This, I would say, was roughly in the vicinity of 4 or 4:15.

Q. Were there any further conversations with CBS representatives subsequent to this?

A. Well, when I told this to Mr. Levin, he instructed Mr. Bell directly to prepare the broadcast and also to remove the lights, to remove the technicians' lights, that is; at this time, I repeated the same statement: that we would do the job completely, but if we couldn't do it completely we wouldn't do any of it.

The Court: You were authorized by the other men there for your union to say that they would refuse to work?

The Witness: Yes, sir."

Do your remember those questions and testifying in the manner that I just read to you?

A. Yes.

Q. And is the testimony correct?

A. It is.

Q. And the answers given were correct?

A. Right.

Q. I would like to read some additional questions and answers. In this case the questions are by the Court:

"Q. When you said if the members of your union couldn't do the lighting and then they couldn't do any of the work, was that designed to get the work of lighting for the members of your union?

A. It was designed to protect the jurisdiction of our members, yes.

Q. Was that designed to have the work assigned to the members of your union?

A. Yes.

Q. You were making that threat that they would not do the rest of the work in order to get the work assigned to members of your union?

A. Yes, your Honor."

[fol. 55] Do you recall the questions and do you recall so testifying?

A. I do.

Q. And are the answers given correct?

A. Yes, they are.

Q. Now, I will continue reading from the Court's questions and your answers:

"Q. Did you advise the members of your union that in that event they were not to handle any of the camera work, in that event they didn't do the lighting?

A. Your Honor, when CBS first indicated, by ordering our technical director to remove the lights, that the lighting was going to be assigned to IATSE, we met in a sort of a caucus and among the 11 or 12 of us present, in full cognizance of the lighting dispute, we knew that this—let me put it this way—we felt this was a breach in our jurisdiction and was injurious to the protection of our work. We also agreed that whatever steps would be taken would be proper and fitting to protect our members.

Q. You agreed you would tell the employer that you wouldn't handle any of the work unless you could handle the lighting; is that right?

A. Yes, sir.

Q. What I was interested in, was that something decided by the men there or did you as Business Representative tell them that that is what they were to do?

A. For the purpose of the Waldorf, that was decided by all of us.

Q. Including you?

A. Yes."

Do you recall so testifying?

A. Yes, sir.

Q. And are the answers given correct?

A. Yes, sir.

* * * * * * *

[fol. 56] Re-direct examination.

By Mr. Dannett:

Q. Did you at any time on April 21st recede from your position that you wouldn't go on with the telecast if IATSE lights were used?

A. No.

* * * * * * *

Hearing Officer: You do recall, don't you, that Levin instructed Bell to remove something, or to have it removed; is that it?

The Witness: Yes, sir.

Hearing Officer: You were there and you heard that?

The Witness: Yes, sir.

Hearing Officer: Do you recall what you did about those instructions from Levin to Bell?

The Witness: I told Mr. Levin that we—

Hearing Officer: Bell was right there.

The Witness: Bell was present.

Hearing Officer: You told him what?

The Witness: I told Mr. Levin that we would be glad—that we would do our work, what we considered our work, the entire work, including the supplementary lighting necessary.

Hearing Officer: But what about the removal of the equipment, of the lighting, the lighting that the technicians installed, that Levin told Bell to have removed?

The Witness: I told Mr. Levin that we could not remove our lights.

Hearing Officer: You told Mr. Levin?

The Witness: That's right.

Hearing Officer: And so Mr. Bell didn't instruct the people to remove them?

[fol. 57] The Witness: That's correct.

Hearing Officer: You stood right there and heard this?

The Witness: Right.

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CARL PRINCE was called as a witness on behalf of Columbia Broadcasting System, and being first duly sworn, testified as follows:

Hearing Officer: Please state your full name and address?

The Witness: Carl Prince, No. 84 Remsen Road, Yonkers, New York.

Direct examination.

By Mr. Dannett:

Q. Mr. Prince, are you employed by Columbia Broadcasting System, Inc.?

A. Yes, sir.
Q. How long have you been so employed?
A. Since December of 1950.
Q. In what capacity are you now employed?
A. As a technician.
Q. And you are a member of Local 1212?
A. That's right.
Q. Of the IBEW?
A. Yes, sir.
Q. Were you assigned to be a cameraman on the "Tony" Awards program?
A. Yes, sir, I was assigned to that program.
Q. And you were to act as a cameraman?
A. For the purpose of program time, I was to operate a camera. However, prior to that, during the set-up time of the show, my activities are not limited to just camera setup.
[fol. 58] Q. But on the actual program time, you would have handled one of the cameras?
A. Yes, sir.
Q. Are you also a representative of Local 1212?
A. As an assistant to the business manager, I am.

Hearing Officer: The business manager being who?
The Witness: Mr. Calame.

Q. You testified in an action brought in the United States District Court for the Southern District of New York by Charles T. Douds, against Radio and Television Broadcasting Engineers Union, et cetara?
A. Yes, sir.
Q. You so testified on June 21, 1957?
A. It was this past Friday, if that was the date.
Q. I would like to read to you from your testimony and I would like to ask you whether the testimony which you there gave is correct.
I am now reading from the questions asked by the Court, as follows:

"Question: Let me ask you, sir, you were planning on being one of the cameramen that right; is that right?
Answer: That's correct.
Question: Did you ever operate the television camera that night?

Answer: I operated immediately after it was set up, after it was cabled in, to check out the circuits, to be sure it was not defective.

Q. A test run?

Answer: Yes, sir.

Question: Did you ever actually use it to telecast that night?

Answer: You mean to televise the show?

[fol. 59] Question: Yes.

Answer: No, sir."

Do you recall so testifying?

A. Yes, sir.

Q. Are the answers given correct?

A. Yes, sir.

Q. I will continue now with the questions asked by the Court.

"Question: Did you ever have any conversation with anyone as to whether or not you should operate that camera that night?

Answer: Well, we had conversations among the men.

Question: And who were present there, all the crew?

Answer: All the crew? Well, yes, all the crew.

Question: And they were all members of the IBEW?

Answer: That's correct.

Question: Was any determination reached as to whether or not the camera should be used to televise the show?

The Answer: Well we decided that we would televise the show in the event the lighting was not done by IATSE.

Question: But if it was done by the so-called stagehands union, that you would refuse to operate the cameras; is that right?

Answer: That's right.

Is that testimony as I read it to you accurate?

A. Yes, sir.

Mr. Dannett: No further questions.

[fol. 60] Cross-examination.

By Mr. Silagi:

Q. Mr. Prince, who were the employees of the camera crew assigned to the Waldorf Astoria on April 21, 1957? Could you give us their names and their titles?

Hearing Officer: Well, we have here a list. Maybe he can identify the list.

Mr. Silagi: That is exactly what I would like him to do.

Hearing Officer: Suppose you look at Board's Exhibit No. 4 for identification and tell us what it represents, and then maybe you can tell us who prepared it and its origin, if you can?

Mr. Silagi: First, can you tell us who prepared it?

Hearing Officer: Let him look at that.

The Witness: This appears to be a complete list of the personnel that were present of the technical crew.

By Mr. Silagi:

Q. Do you know who prepared that list?

A. No, sir, I do not.

Hearing Officer: Does that represent the complete list of Crew No. 10. the technicians who were employed by CBS and all of whom were members or are member of IBEW, Local 1212?

The Witness: Well, it is not a list of the members of Crew No. 10. The majority of the men on here are members of Crew No. 10, but there are some extra men that are not normally assigned to that crew.

By Mr. Silagi:

Q. Who are these extra men not normally assigned to Crew No. 10?

A. Mr. Victor Rubi, Mr. John Freda, Mr. Angelo Gaudino, Mr. John Morris, and Mr. Vernon Surphlis.

[fol. 61] Q. Please identify the classification of these five men whose names you have just listed?

A. Well, Mr. Rubi, Mr. Freda and Mr. Gaudino are listed as utility men; Mr. Morris is listed as link transmitter, and Mr. Surphlis is listed as driver.

Q. Is Mr. Surphlis a technician?

A. He is an assistant technician.

Q. What did he do on the particular day in question?

A. Mr. Surphlis drives the CBS vehicle from our production center, from the field shop, to the location of the show, transporting the equipment in that vehicle.

Q. Is this a station wagon or truck?

A. It is a truck, a commercial vehicle.

Q. And he is not normally assigned to Crew No. 10, is he?

A. No, sir.

Q. How about Mr. Morris, link transmitter? What did he do on April 21, 1957?

A. Mr. Morris was a technician that was operating the microwave transmitter which was transmitting the video signal from the Waldorf Astoria to a receiver. I am not sure whether that was located at either Chrysler Tower or Empire State Tower.

Mr. Dannett: Is this witness testifying as to work that was done or work that he was assigned to do? I think he said this is work they were doing.

The Witness: I can testify that I had seen Mr. Morris' equipment set up with the filaments in the tubes hot, the filaments on, indicating that his power was on through the equipment, and I knew that he had checked his signal through with the receiver man.

Hearing Officer: It is conceded that they didn't do the [fol. 62] work in connection with the sending of the program. What work they did was preliminary to setting up, or the setting up of their equipment preparatory.

By Mr. Silagi:

Q. Is this preparatory work necessary to be done in order to put the show on the air?

A. Yes, sir.

Q. Did Mr. Surphlis actually drive the truck which brought the equipment to the Waldorf?

A. Yes, sir.

Hearing Officer: You don't have to go into that.

Mr. Silagi: For Mr. Dannett's benefit.

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Stenographic Transcript of Testimony at Hearing of June 26, 1957

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PROCEEDINGS

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ORVILLE SATHER, called as a witness on behalf of Columbia Broadcasting System, Inc., being first duly sworn, took the stand and testified as follows:

Hearing Officer: State your full name and address, please.

The Witness: Orville Sather, No. 134 Minell Place, Teaneck, New Jersey.

Direct examination.

By Mr. Dannett:

Q. Mr. Sather, are you an employee of Columbia Broadcasting System, Inc.?

A. Yes, I am.

[fol. 63] Q. How long have you been so employed?

A. A little over 22 years.

Q. In what capacity are you presently employed?

A. I am manager of television technical operations.

Q. In that capacity, are you in charge of all technical operations in the City of New York?

A. Yes, I am, under the direction of Mr. Robert J. Thompson, who is my immediate superior.

* * * * * * *

By Mr. Dannett:

Q. Mr. Sather, at any time during the month of April did you have any conversation with Mr. Fitts with respect to who was to do the lighting work on the "Tony" Awards program?

A. Yes, I did, on several occasions. The first was about a week and a half prior to the show. I do not know the exact date. Mr. Fitts called me and stated that he had looked into the matter of lighting on the "Tony" Awards program, and that, because of the circumstances involved, it was being assigned to IA.

Hearing Officer: Did he mention what those circumstances were?

The Witness: Yes. He states at that time that there would be stagehands handling scenery and properties, and under those circumstances it would be considered as an IA house. For that reason, IA would be assigned to the lighting.

Q. Following that conversation with Mr. Fitts, did you give any instructions to any of the persons reporting to you?

A. Yes, I did. We have an Executone Intercom system in the building. I immediately called the field shop. I believe that Mr. Vernon Cheeseman answered.

[fol. 64] Q. Who is Mr. Cheeseman?

A. He is supervisor in the television field department.

Q. He is a member of the IBEW?

A. Yes, he is.

Q. Local 1212?

A. Yes.

Q. He is covered by the Local 1212 contract?

A. Yes, he is.

Q. To whom does Mr. Cheeseman report?

A. He reports to Mr. Levin, who in turn reports to Mr. Wilson.

Q. Please tell us what you told Mr. Cheeseman.

A. I told Mr. Cheeseman that Mr. Fitts had called and that the lighting for the "Tony" Awards program was being handled by IA. I think that is about the substance of our conversation.

Q. What is the next date on which you had any conversation with Mr. Fitts regarding lighting, if you recall?

A. The next date was Thursday of the following week, late in the afternoon. I called Mr.—

Q. Pardon me. Is that the Thursday preceding the broadcast, the proposed broadcast?

A. Yes.

Q. That would be April 18th?

A. I believe so, yes.

I called Mr. Fitts and told him that Wilson had advised me that there was some question about whether IA or IBEW was to do the lighting. I asked again for his clarification on it, and Mr. Fitts told me that IA was to do the lighting.

I then immediately instructed or confirmed with Mr. Wilson that it was an IA lighting job.

Q. Following that conversation, did you have any further conversation with respect to the lighting work on the "Tony" Awards program?

A. Yes. Mr. Fitts called me back again the next day, which would have been Friday, the 19th.

[fol. 65] Q. What time of the day was it?

A. I don't recall, but I think it was just before noon. It was around the middle of the day. He advised me that he had conversations with Mr. Calame of the IBEW and that the position of CBS was not changed and the IA was to do the lighting and I was to so instruct Mr. Wilson.

Q. Did you so instruct Mr. Wilson?

A. I did.

Q. Did you have a further conversation with Mr. Wilson or anyone else concerning lighting on the same day?

A. Yes. Later in the afternoon Mr. Wilson happened to be in Mr. Mercier's office, which is adjacent to me. Mr. Giriat, the engineer in charge of studio operations came into Mr. Mercier's office. I also came in at the same time.

Mr. Giriat said that he had been talking to Mr. Bob Pantell at the IBEW office, and Pantell had told him that Local 3 of the IBEW, the local electricians at the Waldorf, would not supply power to IA if IA was to do the lighting.

Mr. Silagi: I am having difficulty in hearing you.

Hearing Officer: Read the last portion.

(Answer read.)

Mr. Silagi: I move to strike this as hearsay.

Hearing Officer: I will let it stand.

Q. Will you continue, please?

A. We then discussed what emergency steps we should take and we decided—I believe I instructed Mr. Wilson that he should have lighting equipment available as well as technicians available to handle the lighting in the event that there should be any trouble at the Waldorf.

Q. Did you in your conversation with Mr. Wilson instruct him that the technicians should do the lighting?

[fol. 66] A. No. I emphasized the point that the lighting

was assigned to IA and the technicians were not to do the lighting.

Q. Did you, in your conversation with Mr. Wilson, instruct him to have lighting equipment brought to the Waldorf by IBEW technicians?

A. No, I don't believe so. As far as I can recall, I recommended to him that he have lighting equipment available, but we did not discuss, as far as I can remember taking it to the Waldorf. It was not intended, at any rate.

* * * * * * *

SAMUEL LEVIN, called as a witness on behalf of Columbia Broadcasting System, Inc., being first duly sworn, took the stand and testified as follows:

Hearing Officer: Please state your full name and address.

The Witness: Samuel Levin, 218-21 Grand Central Parkway, Queens Village, New York.

Direct examination.

By Mr. Dannett:

Q. Are you employed by Columbia Broadcasting System, Inc.?

A. Yes, sir, I am.

Q. How long have you been so employed?

A. Approximately 14 years.

Q. In what capacity are you presently employed?

A. Engineer in charge of field operations.

Q. And your immediate superior is Mr. Wilson, who has just testified?

A. That's right.

Q. Did you discuss any question concerning lights or lighting with Mr. Sather on the morning of April 21st?

A. Yes, sir, I did.

[fol. 67] Q. Will you please state what that conversation was?

A. I happened to walk into the garage area and I noticed that the truck—

Q. The garage area of what?

A. Of the CBS-TV field shop.

I noticed there were some lights in the truck that had the equipment going over to the Waldorf-Astoria. I had been previously instructed that no lights were to go over to the Waldorf-Astoria, and it was my understanding that no lights should have gone over.

Q. Who gave you those instructions?

A. Mr. Sather.

Q. Proceed, please.

A. I immediately called Mr. Sather at his home and told Mr. Sather that there were lights on the truck and what should I do about it? Mr. Sather instructed me to—well, inasmuch as the lights were already on the truck, that we might as well let them go over to the Waldorf, but they were under no circumstances to be set up in the Waldorf. They were to be stored somewhere in the Waldorf, but not to be set up.

Q. Following that conversation with Mr. Sather, did you have any conversation with any member of the crew assigned to the show?

A. Approximately 2 o'clock that afternoon—

Q. Did you have any conversation with anyone on the truck with respect to the lights?

A. Not to my knowledge, I did not.

Q. Or in the field shop?

A. I had some conversation with someone in the field shop.

Q. What was the conversation?

A. One of the members of the crew came by the shop. I had to pass this information that Mr. Sather gave to me on to someone from the crew, what Mr. Sather's instructions [fol. 68] were. About 2 p.m. or thereabouts, Mr. Hal Hoffman, a member of the crew that had been assigned to the Waldorf-Astoria, came by the shop and I told Mr. Hoffman to pass information on to Mr. Bell, who was the technical director of his crew, that under no circumstances were these lights that were already on the truck to be set up in the Waldorf-Astoria. Mr. Hoffman said he would pass this information on.

Q. Mr. Hoffman was one of the cameramen on that crew?

A. That's correct. He was one of the cameramen.

Q. Did you go to the Waldorf-Astoria that day?

A. Yes, I did.

Q. About what time did you arrive?

A. About 4:45 I arrived at the Waldorf.

Q. Upon your arrival, did you examine the equipment and the installation?

A. Yes. When I got there, the first thing I saw was that the video equipment—the technical equipment, that is—the switcher control, the audio equipment, monitors and talk-back facilities were already set up, that the cameras had been fired. By that I mean that the power had been turned on to the cameras.

As soon as I arrived, I was informed by one of the members of the crew that Mr. Al Raymond wanted to see me. I looked around for Mr. Raymond. They told he was on the ballroom floor.

I immediately went down and saw Mr. Raymond, and he informed me that the IBEW had set up lights, that the IA was objecting to the lights, to the IBEW lights being put on; that Mr. Bates had issued orders to the IBEW to have the lights removed.

This is the first I saw or knew that IBEW lights had been set up, contrary to my instructions to Mr. Hoffman.

[fol. 69] Q. Did y u actually see the lights, the IBEW lights?

A. Yes, I did, at this time.

Q. And how many lights were there?

A. I saw three lights, IBEW lights that were set up: one on balcony right, next to the camera, one on balcony left, next to a camera, and one in the second tier center.

Q. Following your conversation with Mr. Raymond, did you have any conversation with any of the Local 1212 representatives?

A. Yes. As soon as I found out what Mr. Raymond wanted me for and I walked up to the second balcony, where the control room was set up, and that was the first time I had seen any lights—this was about three or four minutes after I arrived—this is the first time I saw any IBEW lights set up. I went over to the control area. There were some members of the crew present, and Mr. Pantell. I was looking around for Mr. Bell, who was the technical director.

I informed Mr. Pantell, in passing that I was going to

instruct Sandy Bell to remove the IBEW lights that he had set up, contrary to my instructions.

Q. What did Mr. Pantell state?

A. Mr. Pantell said that if the IBEW 1212 lights were removed, there would be no show. About this time Mr. Bell appeared, and I instructed Mr. Bell to remove the IBEW lights. Mr. Bell just shrugged and did not say anything. Mr. Pantell interjected something here and said, "It is either 1212 or no show."

Again, I instructed Mr. Bell to remove the IBEW lights. Again Mr. Bell just shrugged his shoulders.

Q. Did you at this time give any instructions with respect to the installation of equipment or the completion of installation of equipment?

[fol. 70] A. It was about this time that I asked Mr. Bell how much further equipment he had to set up. Mr. Bell informed me that he had one or two other microphones to set up in the orchestra, which would complete his setup.

Q. Did you instruct him to complete the installation of the microphones?

A. Yes, I did.

Q. What did you say?

A. I told Mr. Bell to complete the setup, including the two microphones which he said were not installed in the orchestra. Mr. Bell refused by a shrug of his shoulders.

Q. Who was present at the time you gave these instructions, in addition to Mr. Bell and Mr. Pantell, if any other persons were present?

A. Well, since this was in the control area, there was the audio man present, Mr. Fairman, Mr. Hanford, who was a video control operator or technician, Mr. Scannapieco, who is also a video control technician, and perhaps one or two other men, members of the crew.

Also present were Mr. Raymond, Mr. Pete Emmons and Mr. Hal Sobolov.

Q. Who is Mr. Sobolov?

A. I understand Mr. Sobolov has a title similar to— I don't know his exact title. I believe it is studio manager.

Q. Following the refusal to complete the setup of equipment, were there any other conversations with Mr. Bell or Mr. Pantell with respect to lighting?

A. Yes. About 5:15, I phoned Mr. Bates and told him

that Mr. Bell was refusing to remove the IBEW lights as per instructions. I asked Mr. Bates what I should do.

Mr. Bates informed me that I could offer a compromise agreement to Mr. Pantell to have both IBEW lights and [fol. 71] IA lights used on the show. I went back to Mr. Pantell and offered this compromise agreement to him.

Mr. Pantell at first said he could not go along with this compromise, but he would like to make a phone call. He returned in a few moments and said that there could be no compromise. It was either 1212 doing the lighting or no lighting at all.

Q. That last conversation was about what time?

A. Between 5:15 and 5:45.

Q. Was there a rehearsal scheduled to be held that day?

A. Yes, sir.

Q. What time?

A. There was supposed to be a camera rehearsal between 6 and 7 p.m.

Q. And was there an audio rehearsal to be held that day?

A. I think there was supposed to be an audio rehearsal between 5:30 and 6 p.m.

Q. Did either of those rehearsals take place?

A. No, sir, no rehearsal took place.

Q. Following Mr. Pantell's refusal to accept a compromise, did you give any further instructions to Mr. Bell?

A. Yes. When Mr. Pantell told me that he would not go along with the compromise, I again addressed Mr. Bell and instructed him to remove the IBEW lights and to continue his setup and to continue making pictures, or to continue to make pictures with the cameras. Mr. Bell refused again by not doing anything. He just shrugged his shoulders.

Q. Did Mr. Pantell say anything about that time?

A. Again, Mr. Pantell interjected and said, "It is either 1212 or there will be no show."

Hearing Officer: All these conversations with Bell—were they in the presence of Mr. Pantell?

The Witness: Yes, sir, they were.

[fol. 72] Hearing Officer: Within his hearing?

The Witness: Yes, sir; they were.

Q. By Mr. Dannett: Did the crew go out to dinner that evening?

A. Around 6 o'clock, I noticed that there were very few technicians around the control area and I approached Mr. Bell and asked him where they were. Mr. Bell informed me that he had sent them out to dinner shortly after six. I asked him why he sent them out. He said, "Well, perhaps something will turn up by the time they come back from dinner."

Q. When did the men return from dinner?

A. They started to come back around 6:25 or 6:30.

Q. When they did return, did you give any further instructions to Mr. Bell?

A. Well, I kept asking Mr. Bell every so often to continue making—to continue the setup, but to remove the IBEW lights. It was always refused.

Q. Was there any request to make pictures?

A. There was always a request to make pictures to Mr. Bell.

Q. Did they make pictures?

A. No, they did not.

Q. And were instructions given, after the men returned from dinner, to tear down the equipment?

A. Yes. At approximately 7:30, when I reported to Mr. Bates, who arrived at the Waldorf-Astoria approximately 7 p.m.—I reported to Mr. Bates that the men were not obeying my instructions; that they refused to continue with the setup, that they were not tearing down the IBEW lights.

It was finally decided that since they were refusing these orders—Mr. Bates said, "Well, there is no other alternative but to tell the men to pack up their equipment and go home," which information I relayed to Mr. Bell.

Mr. Bell started to—gave instructions to the men, approximately 7:40 or thereabouts, 7:30 or 7:40, to tear down [fol. 73] the equipment. Mr. Bell said, "Well, that's it," and he gave these instructions to tear down the equipment.

It was about this time that I asked Mr. Bates if we could not possibly leave the equipment up on the basis that perhaps by 11 o'clock or 11:15 someone would change their mind and a compromise or something would be arrived at and we could put the show on eventually.

Mr. Bates agreed with me and I gave instructions by hand signal first to stop tearing down the equipment.

Q. Did you give instructions that they rest the equipment?

A. After I explained to Mr. Bates why I thought it would be a good idea to leave the equipment remain standing, Mr. Digges and Mr. Gallagher came by and also made the same request.

We informed him that the request was being followed out, Mr. Digges being the manager of WCBS-TV.

I immediately went to Mr. Bell and told him to reset all the equipment that he had torn down, if he had torn down any. Mr. Pantell, who was standing there, said, "Nothing doing."

I told Mr. Bell to take down the IBEW lights but to continue setting up the equipment that he had torn down. At this time, Mr. Pantell interjected again and said, "No, it's either 1212 lighting or nothing at all." I repeated my instructions to Mr. Bell to continue setting up any equipment he had torn down and remove the IBEW lights.

At this time Mr. Pantell interjected and said, "No, we are only kidding ourselves."

Q. Did there come a time during the course of that evening in which you suggested to Mr. Pantell or Mr. Bell [fol. 74] that you go on with the existing lights only?

A. Yes, sir, that is correct.

Q. What was your conversation with respect to that?

A. About 10:40, I approached Mr. Pantell and asked him if he would be willing to put the show on without any IBEW lights, without any IA lights, using only the existing house lights.

Mr. Pantell said he would agree to that. He said he is willing to put the show on.

I said, "I first have to check with the IA, to see if they would be willing to agree to it."

I contacted Mr. Raymond, who was backstage, and told Mr. Raymond what I had suggested to Mr. Pantell, to question the IA if they would go along with putting a show on without any lights, either IA or IBEW lights. Mr. Raymond said he would contact the IA officials at the Waldorf and question them about this.

Mr. Raymond did this, and Mr. Raymond explained to the IA officials—

Mr. Spivak: I will object to what he explained. He wasn't present.

Q. Did you have a further conversation then with Mr. Pantell or with Mr. Bell?

A. Yes.

Q. Tell us about that.

A. After I heard from Mr. Raymond again as to what the outcome of my suggestion was, I walked back to the control area, since there wasn't anything further I could do. When I made this suggestion, incidentally, Mr. Raymond and I discussed the conversation about no lights at all, and Mr. Raymond went out to make a phone call. He told me he was going to call Mr. Bates and explain the suggestion to Mr. Bates.

[fol. 75] I returned to the control room area, where Mr. Pantell saw me and Mr. Bell saw me. Mr. Pantell said to me, "What was the outcome? What did the IA say?"

I said, "The IA said no."

Again at this time I asked Mr. Bell if he would continue making pictures, put the show on without any IBEW lights. Mr. Bell shrugged his shoulders and that was the end of the conversation.

. . . . . .

Mr. Silagi: I am prepared to stipulate that the certifications that exist covering these employees—and by "these employees," I refer now to both the stagehands and to the technicians—that the certifications do not, in and of themselves, specifically cover or mention the particular issue at hand, namely, remote lighting.

Hearing Officer: You are referring now to the certification that is in evidence and that I ruled out?

Mr. Silagi: That's right.

Hearing Officer: Now you have that.

Mr. Dannett: I will accept that.

. . . . . .

[fol. 76] BEFORE NATIONAL LABOR RELATIONS BOARD

BOARD'S EXHIBIT 2.

AGREEMENT

COLUMBIA BROADCASTING SYSTEM, INC.

and

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

May 1, 1956-January 31, 1958

. . . . . .

Article I

. . . . . .

SECTION 1.04. JURISDICTION. The work covered by this Agreement shall include all of the following work:

(a) In connection with the installation (except such new construction work as is within the jurisdiction of the IBEW and as may be determined by mutual agreements with other local unions or, failing such agreement, by the International Office of the IBEW to be under the jurisdiction of some other of its local unions), operation, maintenance and repair of radio broadcast, television, sound effects, facsimile and audio equipment and apparatus by means of which electricity is applied in the transmission, transference, production or reproduction of voice, sound and/or vision with and/or without ethereal aid, including all operation and maintenance connected with flying spot scanners, motion picture projectors (subject to the except-[fol. 77] tions hereinafter stated) and all types of recording on disc, wire, video tape, audio tape, kinescope or television recording and/or any other means of recording which may supplant, substitute for or augment the foregoing.

(b) Recording operations shall include recording, rerecording, duplicating and playback by means of the following: disc, wire, tape, audio tape recorders, video tape recorders, wire recorders, disc recorders and all types of

playback mechanisms, including turntables, wire and video and/or audio tape playback equipment, kinescope recorders and any combination of electronic cameras and motion picture cameras, such as "slave cameras" (including the loading of film for such). Motion picture projection machines and slide projectors and any other apparatus which is used to transmit, transfer or record light or sound for immediate or eventual conversion into electric energy, and/or all recording operations, including the editing of video and audio tape performed by the Employer, shall be deemed to come within the scope of this Agreement and such work shall be performed by Technicians. In Chicago and St. Louis the operation of turntables for playback purposes shall be excluded from the foregoing and, in Chicago, all sound effects operations shall also be excluded.

Nothing contained in this paragraph shall be deemed to apply to the playback of recordings for audition purposes only or to the viewing of film for sales, promotion and similar purposes where not in connection with rehearsal or broadcast.

[fol. 78] Similarly, nothing herein shall apply to the work of operating motion picture projectors and/or slide projectors in the operation known in the industry as "front and rear screen projection."

(c) The work covered by this Agreement does not include the operation of effect projectors used to supplant, substitute for or augment scenery only, on live sets.

(d) Any electronic or electrical device or devices mounted on or attached to equipment operated by Technicians and/or operated from the control room shall be set up and/or operated by Technicians, with the exception of the device known as "Teleprompter" which Technicians shall attach and remove from camera dollies and/or tripods but (when operated from the "floor") may be operated by persons other than Technicians.

(e) With respect to the work of editing, cutting and/or splicing motion picture film, where such work is performed by Technicians on the New York staff, said work is included in the jurisdiction covered by this Agreement.

At Chicago, the work of editing, cutting and/or splicing motion picture film, including magnetic tape used as a substitute for the sound track of motion picture film and the

operation of motion picture projectors for the purpose of screening film for the editing and cutting of such film, is not included within the jurisdiction covered by this Agreement.

At Los Angeles, the work of editing, cutting and/or splicing motion picture film, including cutting and editing [fol. 79] magnetic tape used in conjunction with or as a substitute for motion picture film (in accord with the National Labor Relations Board certification in Case No. 21-RC-1983 and in conformance with any clarification which may hereafter be issued by the Board in said case) and the operation of motion picture projectors for the purposes of screening film for the editing and cutting of such film is not included within the jurisdiction covered by this Agreement.

(f) The jurisdiction covered herein includes, where the following work is performed by Technicians employed on the New York staff: the shooting of motion picture film inserts, openings and similar incidental and supplementary short film sequences produced for integration in live programs, rear screen projection process plates, film shots for on-the-air promotion (except where film commercials are used for such purpose), maps and animations produced for use in live programs other than News and Public Affairs programs; including the recording of the sound track for such film and the lighting for such shooting. The foregoing, however, does not include feature productions, shorts, commercials, newsfilm and/or documentaries or any other type of filming not specifically included.

CBS agrees that it will not shoot motion picture film (including the recording of sound track in connection therewith) or contract out such work to be performed in any properties in which Technicians are regularly or occasionally employed under the terms of this Agreement unless such work is performed by Technicians. It is understood between the parties that the above reference to [fol. 80] "properties" in which Technicians are "regularly or occasionally employed" shall not be construed as applying to any motion picture film studios which are physically separated from any building in which Technicians are employed.

(g) Where power generating equipment for electric

power purposes is operated by CBS employees in connection with remote broadcast, field operations or transmitter operations, such operation shall be performed by Technicians covered by this Agreement.

(h) All machine shop work performed in the Engineering Research and Development Department of CBS in connection with the manufacture, production, assembly and repair of any machinery, apparatus or equipment used for radio and/or television broadcasting, and/or recording, and/or experimental, and/or development work, shall be performed exclusively by those Technicians who have been heretofore known as "Machinist-Technicians."

(i) All working drawings, technical drawings and/or mechanical design drawings made in the Engineering Research and Development Department at New York shall be made by Technicians regularly assigned as Draftsmen. Such Technicians shall perform no other duties during any workweek when assigned as Draftsmen.

At all cities except New York, such drawings shall be made by Technicians whose assignments to the work are made on a daily basis and who may be assigned to other duties during the same day, but such drafting assignments and other duties will not be simultaneously performed. [fol. 81] The provisions of this sub-Section shall not apply to sketches, rough preliminary drawings or architectural drawings; such work may be performed by other persons.

(j) The following definitions shall be applied with respect to the work jurisdiction of Technicians employed in the Laboratory Division:

(1) Breadboards. Any group of components assembled in temporary form, for the sole purpose of determining circuit characteristics.

(2) Experimental Unit. The unit from which a prototype may be evolved. It may consist of one or more "breadboards".

(3) Prototype. The first model, from which it is hoped other units will be built as copies.

(4) Production Unit. All those units built as copies of a prototype.

(5) Commercial Unit. Any unit offered for sale or purchaseable in the open market.

(6) Construction. The layout, assembly and wiring of components resulting in 1, 2, 3, 4 or 5 above.

(7) Modification. Changes of components, circuitry or wiring in units (4) or (5) above.

(8) Testing. Comparing the performance or construction of units (4) or (5) above with a standard or standards.

(9) Debugging. Determination of the characteristics of a unit and adjustment or change of such unit to bring about a desired performance.

In accordance with the above definitions, only Technicians shall perform the following work:

[fol. 82] (1) All construction as defined above.

(2) All testing as defined above.

(3) All modification, as defined above, following debugging of the first of such units. It is understood that "Debugging" may be participated in by non-IBEW Engineers where CBS considers it to be essential to the particular project.

(4) All repairs to any above unit.

(5) Operation of any above unit as provided in the contract.

(6) All installation of any above unit built in CBS Laboratories or at CBS' order, whether developed in whole or in part by CBS, when such equipment is used by CBS.

(7) All maintenance of any of the above units.

(k) It is understood that the listing of specific items of Trade Jurisdiction in the preceding subsections of this Section is not intended to limit the scope of coverage of the general provisions in this Section establishing the Trade Jurisdiction of the work covered by this Agreement.

(l) Technicians shall not be required to perform any work which is inconsistent with the provisions of this Section and only Technicians shall perform any of the work specified herein including the handling and distribution of technical equipment.

(m) Equipment built in CBS laboratories or at CBS' order, whether developed in whole or in part by CBS, when used by CBS will be installed by Technicians.

. . . . . .

[fol. 83] Article IV

Section 4.01. Assistant Technicians. (a) In New York and Los Angeles, Assistant Technicians employed prior to the date of this Agreement may perform any one or more of the following duties: Operating dollies, moving, transporting, storing and/or removing camera dollies, microphone booms, lamps cables, and parallel; transporting, placing, and, under the supervision of a Technician, Assistant Supervisor, Technical Director or Supervisor, setting up and dismantling field equipment; assisting in receiving set installation and service and acting as driver or mechanic for Engineering Department vehicles.

(b) CBS agrees that any Assistant Technicians hired on or after the date of this Agreement shall be limited to the following duties:

Acting as driver or mechanic for Engineering Department vehicles, and/or loading and/or unloading technical equipment.

It is further agreed that by or before January 31, 1958, Assistant Technicians on staff as of May 1, 1956, shall be limited to the duties as set forth in this paragraph (b) or shall have become Technicians.

(c) No Assistant Technician shall be required to perform any duties of Technicians except as set forth in Sub-Section (a) above.

(d) Those Assistant Technicians who are qualified to do Technicians work shall be given preferred consideration [fol. 84] for any vacancies which may exist on the staff of Technicians.

. . . . . .

BEFORE NATIONAL LABOR RELATIONS BOARD

Employer's Exhibit 1

PROPOSED AMENDMENTS—1955

Preamble. Line 5: Delete all references to Columbia Broadcasting System, Inc. of Califorina.

Line 17: Add Local Union 715 of Milwaukee, Wisconsin.

Line 23: Change to read:

"• • • assigns at all radio, television, relay, short-wave and FM broadcasting stations owned and/or operated by CBS."

Line 34: Change to read:

"This Agreement is limited to Technicians employed at stations owned and/or operated by CBS and Technicians employed by CBS in the Laboratory Division and the General Engineering Department in New York City."

Section 1.04. (a) Add: "set up and operation of field lighting equipment used on field pickups and the operation of film projectors, wherever used, for rehearsal purposes."

(e) Change sub-paragraph (i) to read:

"Where such work is performed by Technicians employed by the Company at New York and Milwaukee, said work is included • • •."

(h) Delete this sub-section in its entirety and re-letter subsequent sub-sections accordingly.

[fol. 85] BEFORE THE NATIONAL LABOR RELATIONS BOARD, SECOND REGION

[Title Omitted]

Stenographic Transcript of Testimony at Hearing of February 10, 1958

2 Park Avenue
New York, N. Y.,
Monday, February 10, 1958.

Met, pursuant to notice, at 1:30 p.m.

Before: Alba B. Martin, Trial Examiner.

Appearances:

Samuel M. Kaynard, Esq., Counsel for General Counsel, 2 Park Avenue, New York, N. Y.

Messrs. McGoldrick, Dannett, Horowitz & Golub, By: Emanuel Dannett, Esq. and Herbert Schwartzman, Esq., 3 East 54th Street, New York, N. Y., appearing on behalf of the Employer and E. Thayer Drake, Esq., 485 Madison Avenue, New York 22, N. Y.

[fol. 86] Robert Silagi, Esq., 745 Fifth Ave., New York, N. Y., appearing for Local 1212.

Messrs. Spivak & Kantor, By: Harold B. Spivak, Esq., of Counsel, 225 Broadway, New York, N. Y., appearing for Intervenor, Local 1, IATSE AFL-CIO.

PROCEEDINGS

COLLOQUY BETWEEN TRIAL EXAMINER AND COUNSEL

Mr. Kaynard: * * *

Would the reporter please mark as General Counsel's Exhibit No. 2 the following document, which is a letter dated November 27, 1957, from Morris S. Miller, Enforcement Examiner of the National Labor Relations Board, Second Region, to Local 1212, the respondent, in connection

with an inquiry by Mr. Miller of the respondent as to its intention to comply with the Board's determination of dispute.

In connection with this document, it is further stipulated that the respondent Local 1212 received such document and that counsel for respondent, Mr. Robert Silagi, likewise received such document.

Moreover, it is stipulated that the original of this document was on a letterhead of the National Labor Relations Board, Second Region. The letterhead does not appear on this document because it is a copy, which is in the possession of the respondent.

Trial Examiner: You mean the original is in the possession of the respondent?

Mr. Kaynard: Yes.

[fol. 87] Mr. Silagi: No objection.

I want to point out merely that the General Counsel's Exhibit No. 2 was incorrectly addressed, but ultimately we did get a copy, but at a date much later than November 27, 1957.

Trial examiner: Do you stipulate with Mr. Kaynard the things that he has offered to stipulate?

Mr. Sigali: Yes.

Trial Examiner: Do counsel deem that date significant?

Mr. Kaynard: No. Not by virtue of the next exhibit, Mr. Examiner.

Mr. Silagi: It might be relevant if we had let the ten days go by without replying. However, that isn't the case here.

Mr. Kaynard: Since compliance did not turn upon the ten-day period, but upon continued refusal or failure to comply, the ten-day period is not important, for purposes of this proceeding. The date of receipt is not important, except in so far as it was received prior to the response made by the respondent, which would be the next exhibit.

• • • • • • •

[fol. 88] BEFORE NATIONAL LABOR RELATIONS BOARD

GENERAL COUNSEL'S EXHIBIT 2

Radio & Television Broadcast Engineers
Union, Local 1212, IBEW-AFL-CIO
1270 Sixth Avenue 11 W 4284
New York, N. Y.

November 27, 1957.

Re: Radio & Television Broadcast Engineers Union Local 1212, IBEW-AFL-CIO (Columbia Broadcasting System, Inc.) Case No. 2-CD-146

Gentlemen:

You have recently received a copy of the Decision and Determination of Dispute by the National Labor Relations Board in this case. The Board has determined that: Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO, and its agents are not and have not been entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require Columbia Broadcasting System, Inc., to assign the work of setting up and operating lighting equipment on remote telecasts to its members rather than to other CBS employees, who are members of Theatrical Protective Union No. One, International Alliance of Theatrical Stage Employees & Moving Picture Machine Operators of the United States and Canada, AFL-CIO.

In accordance with the Board's Determination you are directed to notify the Regional Director for the Second Region, in writing, on or before December 5, 1957, of the [fol. 89] steps you have taken to comply with the terms of the Board's Decision and Determination of Dispute.

Very truly yours, Morris S. Miller, Enforcement Examiner.

cc: Robert Silagi, Esq. 217 Broadway New York, N. Y.

BEFORE NATIONAL LABOR RELATIONS BOARD

GENERAL COUNSEL'S EXHIBIT 3

Schoenwald, Silagi & Seiser

COUNSELLORS AT LAW

745 Fifth Avenue . New York 22, N. Y.

MAURICE L. SCHOENWALD,
ROBERT SILAGI,
LEONARD SEISER,

TELEPHONE

MURRAY HILL 8-2660
December 11, 1957.

National Labor Relations Board,
Second Region,
2 Park Avenue,
New York 16, New York.

Att: Morris S. Miller, Enforcement Examiner

Re: Radio & Television Broadcast Engineers
Union Local 1212, IBEW-AFL-CIO
(Columbia Broadcasting System, Inc.)

Case No. 2-CD-146

Gentlemen:

With respect to your letter dated November 27, 1957, please be advised as follows:

[fol. 90] My client, Radio & Television Broadcast Engineers Union, Local 1212, IBEW, AFL-CIO, will not comply with the decision and determination of the National Labor Relations Board in this case, dated November 25, 1957. The Board's decision is erroneous, both as to law and fact. It is my client's intention to press this matter to an ultimate review by an appropriate court of law.

Very truly yours, Robert Silagi, Robert Silagi for, Schoenwald, Silagi & Seiser.

RS:rmp

cc: Mr. Charles A. Calame, Bus. Mgr., Local 1212 Executive Board, Local 1212, IBEW

[fol. 91] IN UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

RADIO & TELEVISION BROADCAST ENGINEERS UNION, LOCAL 1212, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, Respondent.

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD—March 19, 1959

To the Honorable, the Judges of the United States Court of Appeals for the Second Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151, *et seq.*, as amended by 72 Stat. 945), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, its officers, representatives, agents, successors and assigns. The proceeding resulting in said order is known upon the records of the Board as Case No. 2-CD-146.

In support of this petition the Board respectfully shows:

(1) Respondent is a labor organization engaged in promoting and protecting the interest of its members in the State of New York, within this judicial circuit where the [fol. 92] unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on October 9, 1958, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent, its officers, representatives, agents, successors and assigns. On the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, and pursuant to Rule 13 (g) of this Court, the Board is certifying and filing with this

Court a certified list of all documents, transcripts of testimony, exhibits and other material comprising the entire record of the proceeding before the Board upon which the said Order was entered, which includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole the Board's said Order and re-[fol. 93] quiring Respondent, its officers, representatives, agents, successors and assigns to comply therewith.

Dated at Washington, D. C. this 19th day of March 1959.

National Labor Relations Board, /s/ Thomas J. McDermott, Associate General Counsel.

[fol. 1] IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Appendix to Respondent's Brief

BEFORE NATIONAL LABOR RELATIONS BOARD

EXCERPTS FROM TESTIMONY

WILLIAM C. FITTS, JR., called as a witness on behalf of the Columbia Broadcasting System, Inc., being first duly sworn, took the stand and testified as follows:

* * * * * * *

Direct examination.

By Mr. Dannett:

* * * * * * *

By Mr. Dannett:

Q. In order to properly telecast a program, is it necessary to do any lighting, that any lighting work be done in connection with that program?

A. On many programs it is necessary, yes; on some, it is not.

Q. Will you please tell us what the lighting work in general consists of?

A. Well, you know I am not an expert on operations of this work, but I can tell you in general that it consists of placing or hanging whatever lights are required and of operating those lights. It also involves bringing them and taking them away, but the primary job is the placement or hanging and the operation after they are placed.

Q. Although you are not an expert, Mr. Fitts, can you tell us something about the types of lights that have to be used where lights are necessary?

A. Well, I can't tell you very much, but I can tell you very broadly, I think. You have in some instances lights or lamps on the camera, the so-called clip-on on the camera itself. You have the regular stage lights in the studios operated through the switchboard or the dimmer board.

You have in some instances footlights. You have spot lights. You have some remotes, you have scoops, stands, things of that kind.

. . . . . .

Q. Who does the lighting work if the program originates from one of the CBS stages or studios?

[fol. 2] A. Local No. 1, the Stagehand's Union, Local No. 1, IATSE, Stage Electricians.

Q. If the program is a remote program, who des the work?

A. This is a matter which has been in dispute, Mr. Dannett, ever since I have been connected with CBS. We have had continuously, throughout the period I have been here, a running dispute between Local No. 1, IATSE, and Local 1212, IBEW, as to the handling of lights on remote originations. We have never had an agreement on that. It has operated on a case-by-case assignment basis.

Q. And if assigned, will it be assigned, within the City of New York, either to Local 1212 or to Local of IATSE?

A. That is correct, it will be assigned to one or the other and the company has to make the assignment in each case.

Q. If the assignment is to Local 1212, who assigns the technical crew to do that work?

A. What we call the Technical Operations Department.

Q. And if assigned to Local 1 of IATSE, who will make the actual assignment?

A. The Staging and Studio Department.

Q. If stagehands—

A. I think I ought to add one thing, though: This is the regular operation of the company in these departments, but in all disputed cases, in every case where a claim is made that the work should be assigned one way or another, by one or another of the unions, or in every case where one or the other of our operating departments feels that a question is or may be involved, it comes to my office and the final decision on assignment is made by me.

Q. Could you tell us the procedure that is followed in a case where there is a dispute and the matter is referred to you?

A. It can come up in one of two ways generally, Mr. Dannett. One of the ways it comes up is that one or the

other of the unions calls me or Mr. Bates, my assistant, and says in substance, "We hear there is going to be such [fol. 3] and such a remote origination. We think the lighting belongs to us. We think it should be assigned to us."

When it comes this way, it then comes immediately to me. I then talk with the operating departments, try to determine which way we think the work should be assigned. That is one way it comes.

The other way it comes is when one of our own operating men, either someone in the stage and studio operation, or someone in technical operations on the management side, knows one of these originations is coming up, has heard from one source or another that there is trouble. They call me. Then I have to get the facts and again I have to make the decision on the assignment.

Q. If such a decision is reached by you, do you then give instructions to the department which has asked for the ruling, or the departments?

A. I give instructions to both departments when the decision is made. If a decision is made that the assignment should be made by Local No. 1, I give instructions to the management people who are operating in that area to assign the work and to obtain the necessary help, if they need to employ extra men. I also then inform technical operations that the assignment has been made to Local No. 1 so that they may inform their people, and it is vice versa. If the assignment is made to 1212, it operates in the opposite way.

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By Mr. Dannett:

Q. Mr. Fitts, in your telephone conversation on April 9th with Mr. Calame, you stated that you described the program to him.

Would you please tell us what you did say in that connection?

A. I told him that it was my understanding that this program was being put on by the American Theatre Wing [fol. 4] in the Grand Ballroom of the Waldorf; that they were using the stage there; that on the stage they were going to have some singing acts interspersed in the award cere-

monies as the ceremonies went on; that they were going to have a master of ceremonies on the stage conducting the entire proceedings; that they were calling up to the stage the recipients of the various awards; that it was going to be necessary to light the stage itself and, in addition, it would be necessary to have side lights. Also, there would have to be follow spots, both to follow the acts and to follow the recipients of the awards on my understanding of the facts.

I also told him that it was my understanding that the American Theatre Wing had some preliminary conversations with representatives of Local No. 1 about the work in and around the stage and had already made some commitments to the effect that they would have to have some stagehands there, in any event.

That was the substance. And I told him that on those facts, trying to follow the general criteria that we had used in the past, we felt this assignment should be made to Local No. 1.

. . . . . .

Hearing Officer: Mark that for identification as Employer's Exhibit No. 4.

(Thereupon, the document above referred to was marked Employer's Exhibit No. 4 for identification.)

Hearing Officer: That is a true copy of the telegram you sent on that day?

The Witness: That is correct.

Hearing Officer: That day being what?

The Witness: April 19th, sir.

Hearing Officer: Is there any objection to its being received in evidence, Mr. Silagi?

[fol. 5] Mr. Silagi: No objection.

Hearing Officer: It will be received.

(Thereupon, the document previously marked Employer's Exhibit No. 4 was received in evidence).

. . . . . .

Q. What took place on the 25th?

A. Mr. Lighty, Mr. Calame, Mr. Pantell and Mr. Harold

Katan—I believe that's correct—met with Mr. Charley Giriat, who is one of the engineers in charge in technical operations, Mr. Raymond and myself in my office. And the entire discussion was taken up with, first, another rehashing of what the past had been, and, second, the effort by the representatives of Local 1212 to have me put down in writing some agreement as to how these assignments would be made.

Q. Who is Mr. Katan?

A. He is a business representative, I believe, of Local 1212.

Q. What did you state with respect to Mr. Katan's request that you place in writing the past practice?

A. I stated two things: One, that it was impossible to do this and get any protection for the company because there was another union involved and we would have to have agreement by both unions on any such definition before the company would have any protection whatsoever; that this is the same thing that had been going on since 1950. Every effort had been made over and over to get these two unions to agree on this matter, and every effort had failed.

I also said that I didn't see how we could get it into an agreement because we disagreed so to the actual situations in the past.

Q. Is that in substance the position of both parties at that meeting?

A. That's right.

* * * * * * *

[fol. 6] Cross-examination.

By Mr. Spivak:

* * * * * * *

Q. Has the company evolved any pattern under which it determines who is to be assigned on remote originations?

A. We have attempted to do so, yes, within our own operations.

Q. And you have attempted in the past to adhere to this pattern as closely as you can?

A. That is correct. I might add that it is not always easy

and I suspect that anybody trying to operate under this kind of day-by-day operation is going to make some mistakes on it.

Q. Can you tell us what this pattern is?

Mr. Dannett: I would like at this time to object to evidence as to this pattern. I would like to go into that at some length, if you don't mind, sir.

As I understand Section 8(b)(4)(D), if a union, in order to compel an assignment of particular work, refuses to perform other work, that is an unfair labor practice unless there is a certification which the employer has refused to follow.

Hearing Officer: Or under the Board's rulings, a contract.

Mr. Dannett: Which we don't agree with but which exists, if there is a contract which the employer has refused to comply with. The Board has also clearly stated that custom and practice in this area is immaterial; that what the prior assignments may have been is of no consequence if there is neither a certification nor a contract, a clear and unambiguous contract.

Therefore, I think at this time I would like to object to any evidence as to what has been the past practice on the part of this employer, or what the employer's sought to [fol. 7] do in making these assignments, as being immaterial to the issues before the Board.

Hearing Officer: Read the question, Mr. Reporter.

(Question read.)

Hearing Officer: How can you possibly be hurt by an answer to that question? Mr. Fitts testified very clearly that he is between the devil and the deep blue in trying to satisfy both of them. He doesn't admit any legal obligation to either of them.

Mr. Dannett: I don't think we will be hurt.

Hearing Officer: All he is doing is telling how he tries to keep his employer out of trouble, and he tells you that he gives certain types of work which he thinks he would like to give to one. He gives other types of lighting work to the other. He doesn't say that he is bound to do it in that fashion, but that is the fashion he evolved and he tries to

keep up with it in order to avoid troubles and interruptions, in the work that his company is performing.

Mr. Dannett: Mr. Hearing Officer, however, if Mr. Fitts is permitted to answer that question, you will find that you are opening up an area of testimony which may prolong this hearing by several days because Local 1212 and CBS have not been in agreement with respect to this question of practice. Local 1212 will proceed, I am sure, as they have done on other occasions, to show that the practice is different than that stated by Mr. Fitts and therefore you are going to have a question of conflicting evidence on the practice of practice.

If the question of practice is immaterial to the case, then it would seem to me that the simplest thing to do is to exclude all of it.

[fol. 8] Mr. Silagi: May I be heard on this question?

Hearing Officer: Yes.

Mr. Silagi: I think this question really goes to the heart of the entire problem. If we were to follow Mr. Dannet's advice to exclude it, merely on the basis of the fact that by admitting this kind of testimony we would be prolonging this hearing by several days, I think this is just about the best thing that could happen. I think this is incumbent upon the Board to hear this kind of testimony, to consider it and to judge upon the basis of this very kind of testimony.

Now, Mr. Dannett has adverted to the fact that the Board has previously stated that custom and practice is immaterial. This may be true. However, there is a decision very recently by the Court of Appeals in the Third Circuit, the National Labor Relations Board against the Plumbers and Pipe Fitters Union, which specifically takes the Board to task for refusing to consider the matter of custom and practice. It says it is mandatory that they do this. Otherwise a Section 10(K) proceeding has no meaning whatever. I should be happy to supply you with the citation in that particular case.

I think that decision is binding upon the Board and must be followed here. Apart from that, we get into the question of why is this important in this particular case. You heard Mr. Fitts tell you that his method of assignment apparently operates on a case-by-case basis. If there is no certification, if there is no contract, what is the Board going to

decide? It has to decide solely on the basis of what has happened in the past. If it doesn't decide on the basis of what has happened in the past and attempt to draw some pattern of conduct from the party's own actions in this [fol. 9] case, then we fall into a mechanistic sort of thing, where the boss comes up and says, "I assign this work to Union A, and absent a certification and absent a Board ruling to the contract, that's the way it's got to be and nothing else."

I respectfully submit that American labor has progressed a great deal farther than that in the last 50 years; that we don't take rulings merely by boss's fiat.

I submit that Mr. Dannett is completely erroneous in his desire to exclude this testimony. This is the very heart and guts of the case. This is what we have to hear.

Hearing Officer: In the absence of a certification or a contract, CBS is at liberty to go on making its decisions on a day-to-day basis. They are absolutely within their rights. I will rule that in the absence of proof of a contract which controls their assignments, or a certification which controls their assignments, that tradition, and area practice are irrelevant and I will sustain the objection.

. . . . . .

Mr. Silagi: Mr. Broadwin, I am now in a position where I will make an offer of proof.

Hearing Officer: That is a sensible thing.

Mr. Silagi: If you will permit me, I will elicit from this witness and from company witnesses the following facts:

1. That since 1946, when CBS went into commercial television, there have been a certain number of remote telecasts; that on these remote telecasts the assignment of lighting has been to technicians of the IBEW.

2. Over a period of years, this has been taken away from the IBEW to a very limited extent.

[fol. 10] 3. That as of the current year, the past 12 months, ending today, contrary to what Mr. Fits has said, there have been four—

Mr. Spivak: I am going to object to this. He is making an offer of proof and says he will elicit from this witness so and so. Now he says that he will elicit things that Mr. Fitts

will dispute. I don't see how he can offer proof on this when the witness will dispute it.

Mr. Silgai: I have evidence which will show—

Mr. Spivak: That doesn't constitute a valid offer of proof, then.

Hearing Officer: Wait, just a second, please.

Mr. Silagi: I will show that in the past 12—.

Hearing Officer: You now offer to prove by witnesses?

Mr. Silagi: By witnesses and documentary evidence that during the past 12 months there have been an average of four remote telecasts per week.

I will also prove that with respect to those remote telecasts there has been a clear assignment of all lighting work in 95 per cent of the cases to the IBEW.

Mr. Dannett: By CBS?

Mr. Silagi: By CBS, yes, without any dispute by anybody, either Local 1212 or the IA; that in the balance of the 5 per cent, there has been a clear assignment of all lighting work to the IA, by reason of various criteria established by Mr. Fitts or people under him. It is only with respect to a fraction of 1 per cent on remote telecasts that there is any dispute at all as the lighting assignment.

I will prove that in the past 12-month period, in fact, there has been only one dispute out of more than 200 such remote telecasts.

[fol. 11] I will further prove, if permitted, that the assignment of the lighting work at the Waldorf-Astoria for the "Tony" Awards is in essence the same kind of assignment as had been made in the Waldorf-Astoria previously and is in essence the same kind of lighting and assignment as had been made at other hotels.

I am further prepared to prove that there is an inconsistency in these assignments, whereas previously the assignment of lighting on remote telecasts, both on the Waldorf-Astoria, under the identical circumstances as in the "Tony" Award was made to the IBEW. For reasons which we cannot understand, the assignment in the particular situation, in the "Tony" Award, was made to the IA.

I think for all these reasons which I have just cited to you in my offer of proof, I should be permitted to elicit these facts.

Hearing Officer: Well, my reaction to that is this: that

absent an agreement definitely and clearly entitling you to that work, or a certification, they can be as inconsistent as they please. They can assign the work to you or to anyone else. They can disregard both of you, Local No. 1 and Local No. 1212.

Mr. Silagi: Perhaps they can, but they have not.

Hearing Officer: Just a moment, please. Again, absent that agreement, I will reject your offer of proof and adhere to my ruling.

• • • • • • •

Q. Mr. Fitts, at the time you called Mr. Sather, on April 9, 1957, and told him of the arrangement, were you aware of the fact that the American Theatre Wing con- [fol. 12] tained an officer who is also an officer official of Local No. 1 of the Stagehands?

A. No, I had no such knowledge.

Q. You were aware of the fact, however, that the American Theatre Wing had preliminary conversations with Local 1 and had made some kind of commitment with the stagehands to employee members of the Stagehands?

A. That's correct.

• • • • • • •

By Mr. Silagi:

Q. Did you also tell Mr. Sather at the time that you were following the general criteria of previous assignments?

A. I did.

Q. And did you tell him what those previous criteria were?

A. I have been over that with him many times. I think I went over it again in general, yes.

Q. What did you tell him at that time?

Mr. Spivak: I object to this.

Hearing Officer: Let him tell it again.

The Witness: Just a minute. I have to understand this question.

Hearing Officer: Read the question.

(Question read.)

Hearing Officer: Did you tell him how you went about deciding as to which one to assign this lighting work to, whether it was Local 1 or Local 1212?

The Witness: I told him in general, yes.

Hearing Officer: Well, you tell us, as nearly as you can presently recall, what you told him in that connection.

The Witness: I told him that I thought this assignment should be made to Local No. 1 because it involved the staging of these acts on the stage in the same way that we had [fol. 13] with other originations from this same room involving such shows as the Auto-Lite show for several years, the Pillsbury Bake Off show for several years and the General Motors show for several years. Each of these were on the stage with singing acts, masters of ceremonies and were quite similar in their setup to this show. These were the things I went over with him.

By Mr. Silagi:

Q. Did you also discuss with him the question of the assignment of lighting in the ballroom of the Waldorf-Astoria involving the dinner at which Secretary Humphreys spoke to the Investment Banking Association?

A. I did not, because the show had never been called to my attention. There had never been a question on the show.

Q. Did you also discuss with Mr. Sather the assignment of the lighting at the dinner at the Waldorf-Astoria where lighting was assigned to the IBEW, at which time the Queen of England was honored?

Mr. Dannett: May I at this time interpose an objection?

Hearing Officer: This brings us right back to what I ruled. He doesn't have to explain or discuss.

* * * * * * *

Q. An April 5th you met with Messrs. Lighty, Calame, Pantell and Katan, Giriat and Raymond; is that correct?

A. Yes.

Q. And you were asked at that time to specify in writing the manner in which assignments were to be made in the future?

A. That's right.

Q. And you refused to do that?

A. I said I couldn't.

Q. You were unable to?

A. That's right. I said it was impossible, to protect the company.

[fol. 14] Q. Protect the company against what?

A. Against conflicting claims. It was just as impossible to make such an agreement in April 1957 as it was in April 1956, when your representatives asked for such an agreement in the negotiation of the contract, and it was just as impossible as it was in 1955, when Local No. 1 asked for such an agreement. In each case it was impossible because we cannot agree on this subject until we get an agreement from both of the unions.

* * * * * * *

ALBERT J. RAYMOND, called as a witness on behalf of Columbia Broadcasting System, Inc., being first duly sworn, took the stand and testified as follows:

* * * * * * *

Cross-examination.

By Mr. Dannett:

* * * * * * *

Q. At any time while you were present, was there an offer made by Mr. Levin, the engineer in charge, to do this TV show using existing house lights only?

A. Yes.

* * * * * * *

Q. About what time was this offer made?

A. Shortly before 10 o'clock, maybe 9:40 or 9:50, something like that.

Q. Did he ask you for any comments about this?

A. Yes.

Q. Or was it just a matter of information that he was passing on to you?

A. No, he asked me to comment on it and get the reaction of Local 1.

Q. He asked you to get the reaction of Local 1 of the Stagehands?

A. Yes, sir.

Q. Did you?

A. I did. By coincidence they happened to have a table at this dinner and most of the officials were there. I discussed it with them.

[fol. 15] Q. Which officials did you discuss it with?

A. Mr. Jacobi, the president.

Q. That is Vincent Jacobi?

A. Yes, Mr. Horohan, who is business agent, and Mr. Pernick. They said they were there from 9 o'clock in the morning. They were ready, willing and able to go. There was no reason why we should not use their lights. They would not go on under those conditions because they had already set up and spent the day setting up.

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ROBERT PANTELL, called as a witness on behalf of Columbia Broadcasting System, Inc., being first duly sworn, took the stand and testified as follows:

* * * * * * * * *

Cross-examination.

By Mr. Silagi:

Q. Was there ever any time on the date in question, April 21, 1957, when Local 1212 receded from the position which had originally been taken, namely, that unless it could do the lighting work it would do no work?

A. Yes, there was.

Q. When did that come about, approximately what time?

A. Approximately ten minutes after ten.

Q. In the evening?

A. Of the evening of April 21st.

Q. Will you tell us, please, how it came about?

A. Mr. Sam Levin—

Q. Who is he?

A. The engineer in charge of field operations for CBS and the highest CBS technical authority executive on the scene approached me.

Q. Was anybody else present at the time he approached you?

A. Yes; Mr. Bell was with him.

Q. Where did this conversation take place?

A. On the second balcony of the Waldorf, in the immedi- [fol. 16] ate vicinity of the location where the technicians had set up the control room.

Q. What did Mr. Levin say to you and what did you say to him?

A. Mr. Levin said, "We can do the show with existing lights," to the best of my recollection. He then said, "Neither you"—meaning the technicians—"nor the the IA stagehands will operate any supplemental lights. We can do it this way. Will you go along with an arrangement of this sort?"

Q. What was your reply?

A. I said, "Yes, we will."

Q. What did he say?

A. He said, "Fine, I will have to check it with the IA," and he left.

Q. After that, what happened?

A. He returned.

Q. About what time?

A. I would say from five to ten minutes after he had left, and he said, "The stagehands won't go along with it."

Q. By the way, did this offer originate with you?

A. No, sir, it did not.

Q. Did it originate with Mr. Levin?

A. I got it from Mr. Levin, yes.

Q. Did Mr. Levin indicate to you in any way that the show with existing house lights could produce a satisfactory picture?

A. The fact that he put the proposition to me—

Mr. Dannett: That is objected to.

Hearing Officer: Answer the question.

A. The fact that he put the question to me——

Hearing Officer: Read the question again, Mr. Reporter, please.

(Question read.)

Hearing Officer: Did he indicate to you in any way that the show with the house lights alone would result in an adequate picture?

[fol. 17] The Witness: Yes, he did.

Hearing Officer: What did he say?

The Witness: By asking me whether I would go along with arrangements of that nature.

Hearing Officer: He said nothing, though, to that effect.

The Witness: He said, "We can do the show with existing lights." This to me indicated that in his technical competence, they could produce the show with the existing house lights.

* * * * * * *

Recross-examination.

By Mr. Silagi:

Q. I show you a document entitled "CBS Remote Lighting."

Do you recognize that?

A. Yes.

Q. Please tell us what it is?

A. This is a history of remote lighting on CBS telecasts from the year 1946 to the present.

Q. What does it purport to show?

A. It purports to show the actual work done regarding the lighting of remote telecasts from the year 1946 to the present.

Q. Does it have any—this is only with respect to remote lighting; is that right?

A. That's correct.

Q. A subject which is under discussion right now?

A. That is correct.

Q. It does not purport to show all lighting done by CBS?

A. No, it does not, only remote lighting.

Q. And does it also indicate by whom the lighting was done?

A. That is correct, it does.

Q. Does this document also show that the lighting was done by assignment by CBS?

A. Yes.

Hearing Officer: Why not mark this for identification and then the record will reflect what it is you are talking about?

[fol. 18] Mr. Silagi: I ask that this document be marked as Local 1212 Exhibit No. 1 for identification.

Hearing Officer: It will be so marked for identification.

(Thereupon, the document above referred to was marked Local 1212 Exhibit No. 1 for identification.)

By Mr. Silagi:

Q. Was Local 1212 Exhibit No. 1 for identification prepared by Local 1212?

A. It was.

Q. Based upon what materials was it so prepared?

A. Based on material obtained from CBS.

Q. I direct your attention to pages 15 through 19 of this exhibit. In the right-hand column the title is "Done By" and then there are various notations, "IA." Please tell us what that means.

Mr. Dannett: Mr. Hearing Officer, I think enough questions have been asked to indicate that this is another effort on the part of Local 1212 to go into the question of past practice. Since you have already ruled that past practice is immaterial, I object to the question and all other questions relating to this schedule.

Mr. Silagi: Mr. Broadwin, in view of your previous ruling, I have no doubt that you are going to reject this as a document in evidence. However, it will go before the Board as a rejected exhibit.

Hearing Officer: Yes.

Mr. Silagi: I think, in view of that fact, I can have this witness explain the code, the symbols, so that if you are overruled at least the Board will be in a position to interpret the document correctly.

Hearing Officer: I will let you do that.

[fol. 19] Mr. Silagi: That is all I am interested in at this point.

By Mr. Silagi:

Q. Again directing your attention to pages 15 through 19 of this exhibit, there are many blank spaces in that right-hand column.

Will you indicate what is the meaning of the exhibit where there is no notation, where it is blank on the right-hand side?

A. The meaning of the absence of any other notation was that the lighting was done by the IBEW technicians.

Q. Members of Local 1212; is that right?

A. Yes.

Q. And on pages 1 through 14 there are notations on the right-hand column "Done by IBEW" or "IA," as the case may be.

A. That is correct.

Mr. Dannett: I would like to ask one question as to the qualification of Mr. Pantell with respect to this schedule. You were not personally involved in any of these telecasts, were you?

The Witness: Which ones?

Mr. Dannett: The telecasts set forth in the schedule.

The Witness: Yes, I have personal knowledge of several of them.

Mr. Dannett: You don't have personal knowledge of all?

The Witness: Yes; as a matter of fact, I do. If you will take any of those programs starting at page 15, each and every one of them, the Godfrey program, "Let's Take a Trip," "Camera 3," "Good Morning Show," and down the list, each one of those programs in turn would have been [fol. 20] brought specifically to our attention, meaning the union officers' attention, if the lighting work had been any other—had been planned to be done by any other group than indicated on this. In other words, on the "Let's Take a Trip," on 7-1-56, if CBS had assigned the work to the stagehands rather than to the IBEW, this specifically would have been brought to our attention.

Mr. Dannett: Of this schedule here, which probably has perhaps a hundred telecasts, there are are only about a dozen——

Mr. Silagi: There are 180 telecasts.

Mr. Dannett: Of the 180 or only a dozen or a dozen and

a half which have the letters "IA" alongside of them, so that you would have only knowledge of roughly a dozen or a dozen and a half of the 180 telecasts; is that right?

Mr. Silagi: To be specific, there are 180 remote telecasts contained between pages 15 and 19, of which only 10 were done by the IA.

Mr. Dannett: So he would have knowledge as to 10 out of 180; is that right?

The Witness: I believe, Mr. Dannett, that in the last pages we are talking about, I have had specific knowledge of others that were done by IBEW.

Mr. Dannett: Mr. Hearing Officer, I think this witness has demonstrated, from his own words, that he hasn't the technical competence to give information regarding this schedule. He has testified now that he knows of a dozen and maybe a few others of 180 telecasts. He is now testifying as to what took place in those telecasts. I don't think that he can properly testify concerning them.

Mr. Silagi: The witness has already testified that this is a compilation based upon material and information which [fol. 21] CBS itself supplied. We are offering it for that particular purpose.

As I said before, in view of your past rulings on excluding the question relating to history, practice, custom and usage, I have no doubt that you are going to be consistent and you will exclude this. It is my purpose to introduce this into evidence; and if the Board thinks that custom and practice is a necessary element in this case, then it has the evidence before it. That is the purpose of this exhibit.

Mr. Dannett: Wholly apart from the question of materiality with respect to past practice, I am saying that there is no proper foundation that has been laid for the introduction of this document. Mr. Silagi has repeatedly stated that this information has been furnished by CBS. If it has been so furnished by CBS, certainly, someone would have to testify and bring the original documents which support this document.

Mr. Pantell himself, as I say, has demonstrated that he only knows the facts concerning a few of the 180 telecasts. I say that this document, wholly apart from the original question of materiality, is not admissible in evidence.

Mr. Spivak: I point out to you that on the April 21st show, the "Tony" Awards show, it doesn't have the IA as having been assigned to this work. It is blank in this very document. That is a symbol of the accuracy of this document.

Hearing Officer: He has admitted long ago—I mean at the outset of this hearing—that the IBEW handled almost 95 per cent of the lighting.

Mr. Spivak: We have to maintain the record very clear with respect to that, because 95 per cent of the overall lighting is done by the IA, I maintain.

[fol. 22] Mr. Dannett: That is studio lighting.

Mr. Silagi: We are talking about remote lighting.

Mr. Spivak: This is important, if it is going into the record in any form. It has been very convenient for the IBEW to attempt to separate the lighting function between that which is in studios, which we have by acknowledgment and by confession, as against that which is done by remotes, in which area we have a dispute. But if a document of this type is in evidence for any purpose, I think we should be entitled then to show that 95 per cent of lighting work, a function, is in the jurisdiction of the IATSE admittedly, and there is an area of dispute with respect to certain remote kinds of lighting.

In that area of remote, we have a further subdivision as to the type of remotes, and our quantity is not significant. I think that the proof would show that 95 per cent or more of the stage productions on remotes are done by IATSE. Now, we make no claim to do lighting, if there is any at a baseball game. It is not significant that the IBEW may have had a thousand cases of baseball games. That is not lighting functions. We are talking about stage productions, and this is the type of thing that we say is within our jurisdiction.

I object to the document because I think it is a very misleading document. If it has any value at all, it can only have value if you break it down as to the types of remotes in each case and to show that on the type of remote that we are discussing in this proceeding, a stage performance at the Waldorf, that we have the predominance of the work.

Mr. Silagi: I am prepared to dispute that with Mr. Spivak.

I am prepared to go into that testimony, but you have already excluded it.

[fol. 23] Hearing Officer: I am not prepared to have either of you go into that.

Mr. Silagi: I am also prepared to stipulate that there is no dispute with respect to remote lighting at places such as IA houses, at places where there is a complete show which leaves a studio and goes to a remote point of origination, things of that kind. There isn't any dispute. I fail to see what the quarrel is. We are talking about remotes of the kind of the "Tony" Awards. If you want to receive evidence about lighting at remotes of the kind of the "Tony" Award, I am here, ready and able to do it.

Hearing Officer: I will sustain the objection to this document going into evidence.

Mr. Silagi: I assume, then, it will go in as a rejected exhibit; is that correct?

Hearing Officer: It is going in as a rejected exhibit, yes.

(Thereupon, the document previously marked Local 1212 Exhibit No. 1 for identification was rejected.)

By Mr. Silagi:

Q. I show you a letter dated January 14, 1955, signed by L. D. Bates, addressed to Charles Calame.

Have you seen that before?

A. Yes, I have.

Mr. Silagi: I ask that this letter be marked for identification as Local 1212 Exhibit No. 2.

(Thereupon, the document above referred to was marked Local 1212 Exhibit No. 2 for identification.)

Hearing Officer: I will state on the record that I sustain the objection to the introduction of that document in [fol. 24] evidence. I rejected it because it simply goes to the question of the extent of practice and tradition, and that is not relevant in the absence of a contract or certification.

Mr. Silagi: Is there any question with respect to the accuracy of Local 1212 Exhibit No. 2?

Mr. Dannett: We will object to the document, but we will not question that it is accurate.

Mr. Spivak: I object, Mr. Broadwin, also on the grounds that it is inaccurate, in that it does not actually portray a full picture of relevant facts, if practice and tradition are relevant at all.

Mr. Silagi: I ask that Local 1212 Exhibit No. 2 be received in evidence.

Mr. Dannett: I would like also, in adding to my objection as to materiality, to point out that this letter was written prior to the making of the agreement of May 1, 1956. It will be recalled that that agreement was made without changing the jurisdictional provision despite the demand for such change which, if granted, would have given this union jurisdiction over remote lighting work.

Mr. Silagi: May we have a ruling?

Hearing Officer: You have offered this letter together with the paper attached?

Mr. Silagi: Yes, which is part of the same exhibit.

Hearing Officer. And you are objecting to it on what ground?

Mr. Dannett: I object to it on two grounds: first, materiality, since the letter bears on past practice, and past practice is irrelevant in this case; secondly, that this letter predates the making of the agreement, which agreement, as I have pointed out, was made without changing the jurisdictional provision that the union had demanded that [fol. 25] it get remote lighting work and that demand had not been acquiesced in and was not agreed-to in the agreement of May 1, 1956.

Hearing Officer: I will sustain the objection.

Mr. Silagi: I assume that Local 1212 Exhibit No. 2 will be a rejected exhibit.

Hearing Officer: Yes.

(Thereupon, the document previously marked Local 1212 Exhibit No. 2 for identification was rejected.)

Mr. Silagi: At this point, I want to advert to my previous offer of proof and inform you that, if permitted, I would use Local 1212 Exhibits 1 and 2 to show the accuracy of the statements which I made earlier today.

Hearing Officer: I will reject the offer of proof and adhere to my ruling.

* * * * * * * *

SAMUEL LEVIN, called as a witness on behalf of Columbia Broadcasting System, Inc., being first duly sworn, took the stand and testified as follows:

* * * * * * *

Cross-examination.

By Mr. Silagi:

Mr. Silagi: I am now attempting to demonstrate that Mr. Levin made a proposal to produce the TV show with existing house lights.

Q. Is that correct, Mr. Levin?
A. It wasn't a proposal. It was a suggestion.
Q. You made such a suggestion?
A. Yes.

* * * * * * *

[fol. 26] By Mr. Silagi:

Q. Mr. Levin, did you testify in the U. S. Court for the Southern District of New York, in the matter of Charles T. Douds against Radio and Television Broadcasting Engineers Union, on June 21, 1957?
A. Was that on a Friday?
Q. Yes.
A. I did.
Q. Did you testify at that hearing?
A. I did.
Q. I now read from the record, page 116, the middle of the page. This question is put by me to you, as follows:

"Q. At the time you made the proposal to put the show on with the existing house lights, was there adequate time to get everything ready and in operation to do the show as you thought it coud be done?"

Mr. Spivak: I object to the question.

* * * * * * *

Hearing Officer: I will let it go in. Then you can make your motion to strike it out.

By Mr. Silagi:

Q. Mr. Levin, in the proceedings before the U. S. District Court, was this question asked of you and did you give this reply?

Hearing Officer: Just read the answer.

Q. The answer was, "Yes, sir." Did you make such a reply to my question before the U. S. District Court?

Mr. Spivak: I now object to the question and answer as immaterial and ask that it be stricken from the record.

Hearing Officer: Sustained. Strike it out.

. . . . . .

[fol. 27] Q. Again going back to the testimony before the District Court, I will read to you a question and answer appearing on page 113. I am asking the questions. I will start at the bottom of 112.

"Q. Did you ever make a proposition to Mr. Pantell or to Mr. Bell, or to both of them, that you thought this show could go on with existing house lights?

A. Yes, sir.

"Q. What did that mean?

A. It means that if there were no lights except the house lights, that an acceptable picture, but a little noisy, would be produced."

. . . . . .

Mr Silagi: Mr. Broadwin, at this point I again renew my application to you to permit me to introduce evidence bearing on custom, usage and practice, for all the reasons which I have given before. I am prepared at this time, if you will permit it, to go extensively into the problem to show what has happened over the past 11 years, to show, as a matter of fact, that what was called a staged show for the "Tony" Awards was in effect no different from many, many other shows produced both at the Waldorf and various other hotels around town, and various other locations.

If you will reverse your ruling and permit me to do that, I think we will have a full and complete record.

Hearing Officer: I can't go along with you, Mr. Silagi. I shall adhere to my ruling.

[fol. 28] BEFORE NATIONAL LABOR RELATIONS BOARD

COLLOQUY BETWEEN TRIAL EXAMINER AND COUNSEL

2 Park Avenue,
New York, N. Y.,
Monday, February 10, 1958.

Met, pursuant to notice, at 1:30 p.m.

Before: ALBA B. MARTIN, Trial Examiner.

* * * * * * *

Trial Examiner: Do you have anything to say, Mr. Silagi?

Mr. Silagi: Yes. I had prepared to move to dismiss the complaint, and I think this may be just as good an opportunity as any other. I will treat it in relation to Mr. Kaynard's request.

My separate defense here is based both on the merits of the case and also procedurally. With respect to the procedure, which I shall treat first, I refer you to the Board's Rules and Regulations, Subpart E, entitled "Procedure to Hear and Determine Disputes Under Section 10(k) of the Act," which appears on page 29 of the pamphlet printed by the National Labor Relations Board, "Rules and Regulations, Series 6, as Amended."

I refer you to that entire subpart E, and particularly to Section——

Trial Examiner: Excuse me, but I have a blue-covered one.

Mr. Kaynard: Page 32.

Trial Examiner: All right.

Mr. Kaynard: Subpart E.

Trial Examiner: "The Procedure to Hear and Determine Disputes under Section 10(k) of the Act."

Mr. Silagi: That is correct.

In particular, I refer you to Section 102.73, entitled "Proceedings Before The Board, Further Hearings, Briefs,

Certification," and also to Section 102.74, "Compliance [fol. 29] With Certification, Further Proceedings," and Section 102.75, "Review of Certification."

The National Labor Relations Board has seen fit to promulgate these rules and regulations, and in three separate clauses here, the Board refers to a certification which shall result from a Section 10(k) proceeding. This, I think, is in compliance with the law and certainly in compliance with the legislative history and intent and purposes of the Act.

If you will examine the document entitled "Decision and Determination of Dispute," which is reported at 119 NLRB 71, and referred to in my correspondence and in the correspondence of Mr. Miller, the Enforcement Examiner of the Board, you will find that nowhere in this document—which is the basis for the complaint and notice of hearing in this proceeding—is there any reference to a certification.

This, I think, procedurally makes the instant proceeding defective, and it must be dismissed on that ground alone.

Apart from that, I urge a dismissal of the complaint on other grounds, which I would like to go into at this moment.

I urge my motion to dismiss on the following grounds:

1. That the Board has failed and refused to admit relevant and material evidence relating to the issues of custom and practice in this particular case, and by failing to receive such evidence, it has arbitrarily curtailed the rights of the respondent and has denied the respondent due process of law, to which it is entitled.

As a second ground for my motion to dismiss, I urge the fact that the Board's decision and determination of dispute is unlawful and improper, and that it failed and refused to make an affirmative award of jurisdiction, namely, the certification which I referred to before; that by failing to make an award, the Board has not acted in accordance with the law, or in accordance with its own rules and regulations, and that its action clearly violates the intent and [fol. 30] purpose of the Act as expressly stated in the legislative history of the Act. In this connection, I refer you to the discussion contained in Judge Hastie's decision, NLRB

against Plumbers and Pipefitters, which is reported at 242 Fed. 2d 722, decided on March 27, 1957.

Third, that the Board should remand this case for a further hearing under Section 10(k), and that such a hearing be a full and complete hearing, namely, an arbitration type of hearing, such as is contemplated by the law.

I have one further argument.

Trial Examiner: Is that a separate motion, that motion to remand?

Mr. Silagi: This is a separate motion to remand.

I have one further argument to present to you, and I think perhaps it might be made right now. I think depending upon how you rule, we will either have a very short or a very protracted hearing here, protracted at least for a couple of days.

I urge upon you the fact that the Board's decision and determination of dispute is a futile document. This past Thursday, on February 6, 1958, Columbia Broadcasting System, Inc., the employer involved here, filed two charges, one under Section 8(b)(4)(A), which has the No. 2-CC-452, and the other, a charge under Section 8(b)(4)(D), which has the number of 2-CD-161. I am informed that these two charges are based upon a similar situation as we have here today, namely, a refusal by a union, or an inducement by a union, to strike and to refuse to perform services arising out of an assignment of lighting at a remote telecast, which is substantially the basis for the charge and the complaint in this particular case.

I urge upon you the fact that, had the Board done its duty in making an affirmative award of jurisdiction, or in granting a certification, as is contemplated by the Board's own rules and regulations, this matter, the instant matter, [fol. 31] and certainly the proceedings which were initiated last week, most likely would never have come to pass.

The Board, as I see it, has an obligation to determine, according to the law, exactly which union is entitled to certain work jurisdiction. This it has failed to do. The proof of the pudding is in the eating, namely, in refusing to do what it is required to do, it merely stirred up additional litigation, which certainly is not the function for any administrative agency.

I state to you it is time that the illustrious members of

the Labor Board came down from Cloud No. 7 down to terra firma and really grappled with the issues as they are presented to them by the various employees and their collective bargaining representatives. This is what is needed to determine the dispute, not the kind of wishy-washy determination of dispute as is contained in the Board's decision and determination of dispute dated November 25, 1957.

For the foregoing reasons, Mr. Trial Examiner, I urge that the complaint therein be dismissed.

• • • • • • •

Trial Examiner: The way the Board has passed upon specific evidence in a specific matter, I don't really consider it within my authority to overrule the Board on that specific evidence in that specific matter, which it seems to me is what you are asking me to do in this particular situation.

So with reference to Mr. Silagi's motion to dismiss the complaint, because he was denied full opportunity to develop its case and present its evidence, which, as he has stated, relates to the rejection of the custom and practice with reference to what group of men shoud do the particular work in dispute, with reference to that, I consider myself bound by the Board decision and determination of dispute in this particular case, particularly in footnote 2 of 119 NLRB 71.

[fol. 32] Those remarks of mine would go also to the motion to remand, which, as I understand Mr. Silagi, would be for the purpose of taking that evidence, which the Board has already held was properly rejected.

As for Mr. Silagi's point about the legal necessity under the Act of the Board's making a certification, in this very case, 119 NLRB 71, the Board has held that Local 1212 is not entitled to that work, and that the Board is not called upon to pass on the question as to whether Local 1 of IATSE is entitled to the work. It seems to me that there again you are asking me to pass upon a specific matter that the Board has already made a determination on in the earlier portion of this proceeding.

In view of that, and in view of my previous remarks, I

will deny the motion to remand and I will deny the motion to dismiss the complaint.

. . . . . .

Trial Examiner: Does the respondent Local 1212 have any defense to offer?

Mr. Silagi: Yes, sir. Mr. Trial Examiner, at this point I should like to refer you back to the record which was made in the Section 10(k) proceeding part of this record, which appears starting at page 66 and going through page 68. In those pages, I made certain offers of evidence—excuse me, certain offers of proof, to the effect that if permitted, I would prove through the witness who was then on the stand, Mr. William C. Fitts, Jr., Vice President in Charge of Labor Relations for Columbia Broadcasting System, that certain things were facts, all having to do with custom and practice.

I renew that offer of proof today.

I also refer you to pages 336 and 337, wherein again there is reference to an offer of proof.

I further offer to prove, if permitted, that the parties themselves, to wit: Columbia Broadcasting System and [fol. 33] Local 1212, in their discussions immediately prior to April 21, 1957, the date of the Tony Awards Program, had many and complete discussions on this matter, and these discussions revolved about the very same problem, namely, custom and usage at CBS with respect to Local 1212, in general encompassing the entire problem of the assignment of lighting on remote telecasts.

I offer to prove, if permitted, through Mr. Fitts and through other witnesses whom I have present and available here today, these things, and I also refer you back to the documentary evidence in this case, which again shows that the parties themselves spoke about the custom and usage, that it was upon the basis of custom, usage and practice that the assignment was made in the manner in which it was made.

For all of these reasons, I respectfully urge you to permit me to go into these matters carefully and thoroughly.

. . . . . .

Mr. Silagi: I refer you in particular to Local 1212's Exhibit Nos. 1 and 2, which were rejected, all bearing upon the question of custom and usage. I also refer you to Employer's Exhibit No. 4, which is a telegram sent by William C. Fitts, Jr., Vice President of CBS in Charge of Labor Relations, to Mr. Albert O. Hardy, who is the Director of Radio and TV for the International Brotherhood of Electrical Workers Union, dated April 19, 1957, and in said exhibit, Mr. Fitts specifically adverts to the fact of past practice, and he bases his decision to award the assignment upon past practice, and I read to you the pertinent sentence. He says: "Such assignment"—referring to the assignment of IATSE members to lighting at remote telecasts—"is contrary to our past practice with respect to the pickup of presentations of this character from the Grand Ballroom of the Waldorf."

. . . . . .

[fol. 34] Trial Examiner: Did you say that was rejected?

Mr. Silagi: Not this one. This is in. This was admitted. This telegram appears on the stationary of Columbia Broadcasting System, Inc., apparently a private wire, dated April 19, 1957, and it is addressed to Mr. Albert O. Hardy, whom I have previously identified, and it is signed by William C. Fitts, Jr., who has also been identified.

The telegram reads as follows:

"Re: Waldorf Remote. Lighty and Pantell"—parenthetically, these gentlemen are representatives of the IBEW—"Insist all lighting must be assigned to 1212. This creates an impossible situation for two reasons. First: Such assignment is contrary to our past practice with respect to the pick-up of presentations of this character from the Grand Ballroom of the Waldorf. Second: Despite the fact that I notified 1212 of this situation on April 9, it was not until yesterday, after all commitments and assignments had been made, that I had any word of trouble. Under these circumstances we must proceed as we had planned. If there is a stoppage we will have no choice but to proceed with our legal remedies.

"I tried to reach you on the telephone in order to explain the gravity of this situation. I was unable to do so.

but do feel that you should have this statement of our position."

I call your attention to the fact that in this telegram, which is two days prior to the show in question, Mr. Fitts, Director of Labor Relations, based his decision solely and exclusively upon two reasons: one, upon past practice, and two, upon a claim that the notice to him that we wanted, or that Local 1212 wanted, the assignment too late, and there was nothing else that was discussed by the parties, and there was no other reason ever given for the assignment as it has been made.

[fol. 35] I therefore urge upon you that all this evidence, all this material, which I am prepared to adduce right now, and have always been prepared to adduce, is relevant and material to a determination of the issues. I therefore urge that you admit it.

. . . . . .

Trial Examiner: Are you through, Mr. Silagi?

Mr. Silagi: Yes. I believe I have referred to the fact that there were prior meetings between Mr. Fitts and representatives of the International Brotherhood of Electrical Workers and Local 1212, and if permitted, I am prepared to show that the subject matter discussed at these meetings revolved almost exclusively about the matter of past practice and custom. I think this is an additional reason why the matter should be explored now and the matter should be before the Board.

. . . . . .

Trial Examiner: As Mr. Silagi said earlier, his offer of proof relates to testimony that was proffered at the 10(k) proceeding, plus more of the same.

Under all the circumstances, I feel that issue has been passed upon in the Board's decision and determination of dispute in Footnote 2, and therefore will reject the offer of proof.

. . . . . .

[fol. 36] BEFORE NATIONAL LABOR RELATIONS BOARD

LOCAL 1212 EXHIBIT 2 FOR IDENTIFICATION

(Letterhead)

Columbia Broadcasting System, Inc.
485 Madison Avenue
New York 22, N. Y.

LOUNSBURY D. BATES, Asst. Director of Labor Relations

January 14, 1955.

Mr. Charles Calame,
IBEW (Local 1212)
11 West 42 Street,
New York, N. Y.

Dear Charlie:

Herewith four copies of a summary of our actual practice with respect to the Lighting on Remotes for the years 1952, 1953, and 1954.

The information for the prior years had to be constructed from our records of the scheduling of assignments and the time permitted for preparation was inadequate to have the entire job tabulated and typed. However, a portion of it has been put into understandable form and the balance will have to be lifted from the scheduling sheets which are submitted herewith in rough form.

I believe that the over-all picture is clear and significant. If you have any further questions please do not hesitate to call upon us.

Best regards.

Sincerely yours, /s/ Biff Bates, L. D. Bates.

LDB:jf

[fol. 37] SUMMARY OF ACTUAL PRACTICE WITH RESPECT TO LIGHTING ON REMOTES—1952, 1953 AND 1954

(1) 1952

There were 54 remotes upon which the lighting function was performed. Of these IBEW Technicians did the lighting on 38. IA Stagehands did the lighting on the following 16:

All Around the Town—2 shows—stage productions at an armory
The Steve Allen Show at the St. George Hotel
The Faye Emerson Show at St. Albans Hospital
Suspense—2 shows at the Waldorf
Faye Emerson at Loew's State
Celebrity Time—Madison Square Garden
The Easter Show—2 shows—Sherry Netherland
Television Clinic at the Waldorf
All Around the Town at Coney Island
A pickup from the 46th Street Theatre
The Flag Dog School
Pillsbury Baking Contest at the Waldorf
Toast of the Town at the Roxy

(2) 1953

There were a total of 48 remotes upon which the lighting function was performed. Of these IBEW Technicians did the lighting on 38. The following 10 productions were lit by Local No. One Stagehands:

The General Motors Show at the Waldorf
The Easter Show at the Plaza
Suspense at the Waldorf
Adventure at the Museum of Natural History
The Ice Capades at Madison Square Garden
A color Clinic at the Waldorf
A color remote at the Museum of Art
Toast of the Town at Carnegie Hall
Toast of the Town at the Metropolitan Opera House
A Color demonstration at the Waldorf

[fol. 38] (3) 1954

There were 102 remotes upon which the lighting function was performed. Of these IBEW Technicians did the lighting on 94. The following 8 productions were lit by Local No. One Stagehands:

Toast of the Town from Boston
The General Motors Show from the Waldorf
Suspense from the Waldorf
Toast of the Town from a battleship—New York Harbor
Toast of the Town from a Westchester Country Club
The Morning Show from Mitchell Field
Toast of the Town from Mitchell Field
I've Got a Secret from the Statler

[fol. 39] BEFORE NATIONAL LABOR RELATIONS BOARD

EMPLOYER'S EXHIBIT NO. 4

COLUMBIA BROADCASTING SYSTEM, INC.

Private Wire

Date: April 19, 1957
Charge to Account No.
(Div.) 414 (Dept.) 71 07

Mr. Albert O. Hardy,
9220 Kingsbury Drive,
Silver Springs, Maryland.

Re: Waldorf Remote. Lighty and Pantell insist all lighting must be assigned to 1212. This creates an impossible situation for two reasons. First: such assignment is contrary to our past practice with respect to the pickup of presentations of this character from the Grand Ballroom of the Waldorf. Second: despite the fact that I notified 1212 of this situation on April 9, it was not until yesterday, after all commitments and assignments had been made, that I had any word of trouble. Under these circumstances we must proceed as we had planned. If there is a stoppage we will have no choice but to proceed with our legal remedies.

I tried to reach you on the telephone in order to explain the gravity of this situation. I was unable to do so but do feel that you should have this statement of our position.

William C. Fitts, Jr.

[fol.40] IN UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 24

October Term, 1959

Argued October 16, 1959

Docket No. 25573

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

RADIO & TELEVISION BROADCAST ENGINEERS UNION, LOCAL 1212, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, Respondent.

Before: CLARK, *Chief Judge*, MOORE, *Circuit Judge*, and J. JOSEPH SMITH, *District Judge*

OPINION—December 3, 1959

The National Labor Relations Board petitions for enforcement of a cease and desist order it has entered against the respondent union on a finding of unfair labor practices. 121 N. L. R. B. No. 158. An earlier decision concerning this matter is reported at 119 N. L. R. B. 954. Enforcement denied.

[fol. 41] MELVIN J. WELLES, Atty., National Labor Relations Board, Washington, D. C. (Jerome D. Fenton, Gen. Counsel, Thomas J. McDermott, Asso. Gen. Counsel, Marcel Mallet-Prévost, Asst. Gen. Counsel, and Arnold Ordman, Atty., National Labor Relations Board, Washington, D. C.), *for petitioner.*

ROBERT SILAGI, of Schoenwald, Silagi & Seiser, New York City (Arthur L. Galub, New York City, on the brief), *for respondent.*

CLARK, *Chief Judge:*

The National Labor Relations Board petitions for enforcement of its order that the respondent union (IBEW)

cease and desist from conduct found to constitute an unfair labor practice under §8(b)(4)(D), 29 U. S. C. §158 (b)(4)(D), the "jurisdictional dispute" provision of the Labor Management Relations Act of 1947. Briefly stated, the underlying dispute is between the respondent union and an IATSE local[1] over assignment by the Columbia Broadcasting System of lighting work in connection with certain "remote" television broadcasts, i.e., those not originating in the company's home studios. This continuing dispute has necessitated the cancellation of several telecasts following work stoppages by one of the unions when lighting work was assigned to the other. The present proceeding arises from such an incident instigated by respondent's refusal to operate the camera equipment unless it also performed the program's lighting tasks.

[fol. 42] For purposes of this enforcement proceeding, respondent concedes its violation of §8(b)(4)(D). But it contends that the Board failed to comply with the special procedure prescribed by §10(k), 29 U. S. C. §160(k).[2] This section provides that when an unfair labor practice is charged under §8(b)(4)(D), "the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen," with an ex-

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[1] Theatrical Protective Union No. 1, International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada, AFL-CIO.

[2] Sec. 10(k) provides:

> "Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 158(b) of this title, the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed."

ception not here involved encouraging voluntary adjustment of the dispute. The Board concedes that a determination under this section is a prerequisite to the issuance of a cease and desist order, but contends that its hearing and finding fulfilled the requirement.

Thus the only question involves the construction of the statutory direction to "determine the dispute." The Board's position is that its finding that the respondent had no claim by contract, order, or certification to the disputed work suffices, while respondent maintains that the Board is required affirmatively to allocate the work to one of the competing unions. This issue has been resolved against the Board by the Third and Seventh Circuits. See *N. L. R. B.* v. *United Ass'n of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of U.S. and Canada Locals 420 and 428, AFL (Hake)*, 3 Cir., 242 F. 2d 722; *N. L. R. B.* v. *United Brotherhood of Carpenters and Joiners of Amer-*
[fol. 43] *ica, AFL (Wendnagel)*, 7 Cir., 261 F. 2d 166. But the Board has adhered to its position, although it has not sought certiorari to resolve the dispute.

We turn first to an examination of the statutory language. The scheme of §10(k) is to provide an opportunity for the private adjustment of disputes causing jurisdictional strikes; but in the absence of such adjustment, the Board itself is to determine the disputes. It is difficult to attribute any meaning to the word "dispute" unless it refers to the controversy between the unions as to which is entitled to the work. It also seems clear that the Board's function is to impose a settlement in the event that the parties are unable themselves to reach agreement. Since private adjustment can only envision agreement as to which group is entitled to the work, the Board is required to make this determination where private negotiation proves unsuccessful. Further, under the Board's view that Congress has left the determination of disputes involving work assignments to the employer, the §10(k) hearing and determination become superfluous. Private settlement would be equally encouraged by a provision for a 10-day notice in advance of an unfair labor practice proceeding.

Although the language of the enactment is unambiguous, the legislative history is not thereby rendered immaterial. But since Judge Hastie in the *Hake* case, *supra*, 3 Cir.,

242 F. 2d 722, has fully reviewed this history, we shall content ourselves with a brief summarization. The original provision, as adopted by the Senate, would have settled jurisdictional disputes by compulsory arbitration before a Board-appointed arbitrator or in the alternative through adjudication by the Board itself. S. 1126, 80th Cong., 1st Sess. (1947). But the arbitration clause was deleted in conference committee, so that the bill as enacted prescribed Board determination alone. H. R. Conf. Rep. No. 510, 80th [fol. 44] Cong., 1st Sess. 57 (1947). The discussion of these provisions on the floor and in committee reports leaves no doubt that the Congress contemplated affirmative Board adjudication of disputed work allotments. See *Hake, supra*, 3 Cir., 242 F. 2d 722, 725; 71 Harv. L. Rev. 1364, 1366 (1958).

The Board urges that its policy has encouraged the voluntary settlement of jurisdictional disputes and thus has refuted the fears of those who opposed passage of §10(k) on the ground that it would encourage rather than prevent strikes. Such apprehension not only was expressed in the Congress, but also constituted one of the grounds for the Presidential veto. See 93 Cong. Rec. 6452-6453, 6506, 7486. But this line of argument in effect admits that the Board's construction of the Congressional mandate does not conform to the understanding expressed by opponents, as well as proponents, of the section. Since the provision has not been effectuated as enacted, whether or not jurisdictional strikes will be encouraged remains as speculative today as it was in 1947. Since Congress chose to disregard this risk, it is not for the courts or the Board to accord it greater weight. It might also be noted in passing that during the pendency of the present case, another telecast was cancelled because of picketing by the IATSE when the disputed lighting work was assigned to respondent. Thus the prospect of voluntary settlement seems somewhat remote.

The Board also relies on arguments based on the internal consistency of the Act's provisions. Thus it cites §303(a)(4), which contains language substantially identical to that of §8(b)(4)(D), but which by virtue of §303(b) grants an independent action for damages to those injured by jurisdictional disputes. The Board asserts that an incongruous result is reached if damages may be assessed

under §303(a)(4), although the union may be found entitled to the work by virtue of an affirmative allocation [fol. 45] under §10(k). In this respect reliance is placed on *International Longshoremen's & Warehousemen's Union* v. *Juneau Spruce Corp.*, 9 Cir., 189 F. 2d 177, affirmed 342 U. S. 237. While there is language in the opinion of the Ninth Circuit which supports the Board's position,[3] the Supreme Court's decision rests on the premise that the two sections are not to be construed *in pari materia*. It is to be expected that the considerations which underlie the grant of private redress differ from those which determine the application of administrative process.

A conflict is also alleged to exist between an affirmative award of work jurisdiction and the provisions of §§8(a)(3) and 8(b)(2) which protect employees from discrimination because of their union membership or lack thereof. The Board notes its agreement with the suggestion by Judge Hastie in the *Hake* case, *supra*, 3 Cir., 242 F. 2d 722, that a §10(k) determination would not be binding on the employer; but it asserts that the determination "would presumptively authorize that union 'to cause or attempt to cause' the employer to discriminate against the incumbent employees to whom he has assigned the work." But in view of the nature of the disputed tasks here involved it is improbable that any employees will be displaced. Even assuming such displacement, Congress has apparently adjudged that this interest is outweighed by the policy of settling jurisdictional disputes. Further, the same result would seem to be effected by the Board's determination of disputes involving the scope of bargaining units. See *Local 26 (Winslow Bros. & Smith Co.)*, 90 N. L. R. B. 1379; *Amalgamated Meat Cutters & Butcher Workmen (Safeway Stores, Inc.)*, 101 N. L. R. B. 181; *National As-* [fol. 46] *sociation of Broadcast Engineers & Technicians (American Broadcasting-Paramount Pictures)*, 110 N. L. R. B. 1233.

The Board's suggestion that the result here reached

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[3] "[U]nder the plain language of Section 8(b)(4)(D) we are unable to see how the Board in a Section 10(k) proceeding could make a determination adverse to the assignment of the work by [the employer]." 9 Cir., 189 F. 2d 177, 188.

would "erect an almost insuperable obstacle" to the issuance of injunctive relief under § 10(1) is adequately answered by *Alpert* v. *International Brotherhood of Electrical Workers, Local No. 90, AFL-CIO*, D. C. Conn., 163 F. Supp. 774. Reliance is also placed on the lack of statutory standards on which to base an affirmative determination. But the relevant criteria have been suggested by Board Member Murdock, dissenting in *Local 562 (Northwest Heating Company)*, 107 N. L. R. B. 542, 554.

It may be that the Board's assertions would be more persuasive if the intent of Congress were unclear. Note, however, Professor Cox's testimony that the Board's practice "is unsound whether it is required by the statute or results from misapplication." Hearings on Proposed Revisions of the Labor-Management Relations Act of 1947, Senate Committee on Labor & Public Welfare, 83d Cong., 1st Sess., pt. 4, pages 2428-2431 (1953). It is also instructive that there seems to have been no compliance with the Board's own rules, which recognize its power to allocate disputed tasks. This was the ground on which enforcement was refused by the Seventh Circuit in the *Wendnagel* case, *supra*, 7 Cir., 261 F. 2d 166. Our attention has been directed to the fact that these rules have been "rephrased" subsequent to the hearing herein; but, as the Board itself notes, its rules are immaterial unless they comply with the statutory scheme.

In view of the unambiguous language of § 10(k), and supported as it is by the legislative history and the precedents, we are convinced that the Board's present position contravenes the statutory direction.

Accordingly, the petition for enforcement is denied.

[fols. 47-48] IN UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 25573

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

RADIO & TELEVISION BROADCAST ENGINEERS UNION, LOCAL 1212, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, Respondent.

DECREE—December 28, 1959

Before: CLARK, *Chief Judge*, and J. JOSEPH SMITH, *District Judge*.

This cause came on to be heard upon the petition of the National Labor Relations Board for the enforcement of a certain order isued by it against the aforesaid Respondent on October 9, 1958. The Court heard argument of respective counsel on October 16, 1959, and has considered the briefs and transcript record filed in this cause. On December 3, 1959, the Court being fully advised in the premises, handed down its decision denying Board's petition for enforcement of its order.

On consideration whereof, it is ordered, adjudged and decreed by the United States Court of Appeals for the Second Circuit that the said order of the National Labor Relations Board directed against Radio & Television Broadcast Engineers Union Local 1212, International Brotherhood of Electrical Workers, AFL-CIO, its officers, representatives, agents, successors and assigns, be and it hereby is denied.

/S/ Charles E. Clark, Judge, United States Court of Appeals for the Second Circuit. /S/ Leonard P. Moore, Judge, United States Court of Appeals for the Second Circuit.

Filed: December 28, 1959.

[fol. 49] Clerk's Certificate to Foregoing Transcript (Omitted on Printing).

[fol. 50] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—FEBRUARY 18, 1960

Upon Consideration of the application of counsel for petitioner(x),

It is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including April 30th, 1960.

John Marshall Harlan, Associate Justice of the Supreme Court of the United States.

Dated this 18th day of February, 1960.

[fol. 51] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—May 31, 1960

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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